JURIDICAL REVIEW OF WEBSITE PROTECTION THROUGH COPY RIGHT LICENSE AGREEMENT

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Abstract: This research is aimed at analyzing the legal protection of website copyright in preventing copyright violation in internet and the extended role of the license in preventing copyright violation to protect the third party. This research is normative study to study and analyses legal material either the primary or secondary or tertiary ones. The approach used in this research is conceptual and analytical approach.

The research showed that the inference of the study is that legal protection on the website in preventing the legal violation is that through registering the copyright although the registration is not obligation. The registration should be conducted by the copyright owner of the website that is ready to publish. Finally, the license may boost the fair and good competition among the designers of the website within the protection of license agreement model that protect the work that meet three criteria mentioned in laws article 1320 and 1338 of Civil Code which look very easy and simple to apply, but consist of many legal implication that need further attention since it relates to the right of consumers that have protection right in the content of the agreement.

Keywords: Website, Copyright, License

I. INTRODUCTION

1.1 Background

In its development, the field of website has become increasingly fertile land and also attracts interest to the recording industry or to “show business”. For everyone who is involved in this world, especially parties directly related to the world of websites such as website creators and users of the website (user), will benefit greatly, because it can bring benefits financially and popularity.

The relationship between website creator and website user (user) is usually poured in the form of agreement. This Agreement shall be in the form of authorization by the website creator to the user of the website to announce and reproduce a work to the public through any means. This copyright agreement of this website by those closely related to the copyrighted
website is called “Copyright License Agreement on Website”. The granting of a license from the owner or the copyright holder (authorizer) to the user is generally accompanied by compensation to be paid by the commercial user to the owner or copyright holder.

The issue of Copyright will touch various aspects such as technological, industrial, social, cultural and other aspects. But the most important aspect when associated with protection for intellectual work is the legal aspect. The law is expected to be able to overcome various problems that arise related to the Copyright. The law should be able to provide protection for intellectual work, so as to develop the creation of society which ultimately leads to the goal of successful copyright protection.¹

In line with the above, the authors feel the need to conduct research to get an explanation of “Jurisdiction Overview of Website Protection Through Copyright License Agreement”.

1.2 Problem Formulation

Based on the above introduction, then there are three issues that will be discussed is, How Legal Protection on the website in preventing the occurrence of violations in cyberspace.

II. RESEARCH METHODS

2.1 Type of Approach

This type of research is normative legal research. Approach methods used are: Approach Laws, Conceptual Approach,² and Case Approach.

2.2 Source of Legal Material

Primary legal materials are binding legal materials and are the main basis for use in the framework of this research, including: Law No. 28 of 2014 on Copyright, Civil Code. Secondary legal materials, materials that provide explanations of the primary legal material relevant to this research, among which are various literature on Intellectual Property Rights, Websites, and Licenses. Tertiary legal material is supporting material, that is material which gives guidance and explanation on primary law material and secondary law material, in the form of legal dictionary, magazine, journals, newspaper, encyclopedia and so on which is used to complete or support research material.

2.3 Legal Material Collection Technique

The method of analysis used by the authors in this study is qualitative analysis that is after all legal materials are collected and identified, then the processing of legal material drawn conclusions from the relations (preposition) between rules, principles, concepts to answer problems with deductive methods. The deductive method is done by interpreting legal

¹Linda Agustina, Perlindungan Hukum Pencipta Lagu Terhadap Website Penyedia Jasa Download Lagu Gratis Dalam Media Internet, Fakultas Hukum Universitas Hasanuddin, Makassar, 2012, hlm, 44.
²Amiruddin dan Zainal Asikin, Pengantar Metode Penelitian Hukum, PT. Raja Grafindo, Jakarta, 2004, hlm. 35
principles and doctrines to obtain conclusions that are in accordance with the research objectives that have been formulated.

III. RESULTS AND DISCUSSION

3.1 Legal protection of websites in preventing copyright infringement in cyberspace

The State functions and plays a role in maintaining order, security, and providing welfare to the community including the obligation to always strive in order to provide legal protection to the Creator and Copyright Holder of Cipta website, as a form of the State's concern for the community.

Law no. 28 Year 2014 on Copyright is the realization of the State to protect its citizens in the field of Copyright. However, in spite of the development of the Act, copyright infringement has occurred including violations of the performance of the copyrighted works of the website. This violation occurs due to lack of understanding of Copyright law for both the Creator and the users themselves as well as for the website. Copyright is an exclusive right of the authors that arise automatically on the basis of a declarative principle after a work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of legislation (Article 1, paragraph 1 UUHC No. 28 of 2014). Whereas in the Copyright there are 2 (two) things: Creator and Creation, what is a Creator, in UUHC No.28 of 2014 mentioned Creator is a person or several persons who individually or together produce a creation that is characteristic and personal, while the Work is every work of creation in the field of science, art, and literature resulting from inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form.3

Registration Copyrights are not required for the creator to register his copy works, but by registering the work of his copy will be more advantageous for the copyright holders especially in the event of a dispute in the future. In accordance with Article 69 Paragraph (1) of the UUHC In the event that the Minister accepts the Application as referred to in Article 68 paragraph (4), the Minister shall issue a Letter of Record of Creation and record in the General Register of Works.

Website is a creation consisting of several parts that are usually created by two or more people, the website designer duty to design the look of website and website programmer who served to bring the system services and functions on the website and website administrators in charge of maintaining the website after the website is displayed on the internet.4

Cybercrime or cybercrime's crime is always threatening and can happen through various media devices connected to the internet, PCs, laptops and other mobile devices. Included in cybercrimes include spam and scams, malware, confidence fraud, online auction fraud, check fraud, credit card fraud, identity fraud, and so on. Crime action in cyberspace needs to be addressed carefully, so that crime in the virtual world can be minimized. Cybercrime needs to

3 Budi Agus Riswandi dan M. Syamsudin, Hak Kekayaan Intelektual dan Budaya Hukum, PT. Raja Grafindo Persada, Jakarta, 2005., hlm. 34
be anticipated because it has an adverse impact both financially and non-financially, privately, organizationally, or government, and country.\textsuperscript{5}

To prevent the occurrence of website violations in cyberspace a website must be managed correctly, ranging from clear objectives, appropriate target audience, any information or services to be loaded, to technical issues ranging from choosing a domain name or website address, server placement, the creation of the website page code, and management up to the website can be used.

Therefore, the government tries to give some steps or ways to prevent cybercrime for internet users, including:\textsuperscript{6}

a) Using wireless LAN at home or office after setting data encryption such as (WPA2: Wi-Fi Protected Access 2 and others). Thus, clear text communication cannot be tapped and prevent unauthorized access.

b) For smartphone users, it is recommended to always update the operating system, applications and anti-virus software to the latest available version. Also, when downloading an app, be sure to check if the site is trustworthy and check who is providing the app.

c) Internet users are also expected to be more careful when clicking on sites that cannot be trusted.

d) For electronic mail users, it is recommended not to open email attachments or suspicious URLs. Install antivirus software and make sure it's up to date, and periodically update the app next to the operating system (OS).

In addition there are several ways that can be used to prevent the occurrence of website violations in cyberspace by:\textsuperscript{7}

a) Using Security Software Up to Date.

b) Protecting your computer with antivirus.

c) Make Password that is difficult to know by others.

d) Make a Copy.

e) Do not haphazardly clicking or pressing links that appear on the Social Network.

3.2 Model license agreement that can protect third parties

Of all the IPR laws specified above essentially licensed is a form of licensing by the licensee to the licensee to utilize or use (not transfer the right) an intellectual property owned by the licensor under certain conditions and within a certain period of time generally accompanied by a reward of royalties. Generally, the licensor and the licensee will negotiate and hold a consensus regarding the granting of economic utilization of IPR within the scope of

\textsuperscript{5} Ibid

\textsuperscript{6} Dharmawan, Ni Ketut Supasti, Hak Kekayaan Intelektual Dan Harmonisasi Hukum Global (Rekonstruksi Pemikiran Terhadap Perlindungan Program Komputer), Badan Penerbit Universitas Diponegoro, Semarang, 2011., hlm. 61

\textsuperscript{7} Ibid..
the license. The scope of the license is the limit on what licensors can and cannot do to the IPR transferred and is usually described in the license agreement. Model or form License or contract agreement is usually written and covers at least: 8

a) Determining area coverage.
b) Identify the owners of IPR and their rights.
c) Explain the holder of IPR and their rights in using IPR.
d) Determine who is responsible for registering and protecting IPR (usually owners).
e) Determine whether the license is exclusive or non-exclusive.
f) Determine the term of the license (eg, one year, three years and so on).
g) Determine whether the license can be extended including its terms.
h) Describe any action or event that violates the agreement.
i) Describe the act or event that automatically terminates the contract.
j) Decide the dispute resolution procedure.
k) Determine the increase, cancellation, violation, and sub-license.
l) Determine the law governing the issue of this contract.

In developing countries, IPR license agreements are often governed by IPR protection laws as well as investment laws. Therefore, in many developing countries, some ministries require contracts in writing and must be registered, so they can be monitored whether the contents of the contract are in accordance with the law or not. In some countries, the government will examine whether licensing contracts are consistent with: 9

a) Law of covenant.
b) IPR Act.
c) Anti-monopoly Law.
d) Investment Law.
e) Public policy and public interest.

A number of laws relating to intellectual property require the recording of license agreements to the Directorate General of Intellectual Property (DITJEN KI) of the Ministry of Justice and Human Rights. The obligation of the listing shall be a condition which must be fulfilled when a license agreement wishes to apply to the interested third party. Because, without being noted by the Directorate General of Customs and Excise, the license agreement has not had any legal consequences, especially for third parties.

And in line with the timing of the Ministry of Law and Human Rights (MENKUMHAM) issued a new regulation namely Minister of Law and Human Rights Regulation no. 8 of 2016 concerning the Terms and Procedures for the Application of the Registration of Intellectual Property License Agreement (“PERMEN”), which came into force on February 24, 2016, one of the considerations of the issuance of this rule in order to improve

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8 Budiono Herlien, Azas Keseimbangan Bagi Hukum Perjanjian Indonesia berdasarkan Azas-Azas Wigati Indonesia, Citra Aditya Bakti, Bandung, 2006., hlm 27
9 Ibid
the service and provide legal certainty for the right owner or right holder of the object of its intellectual property to the licensee. Not only that, with this rule, it is expected that revenues from Non-Tax State Revenue (PNBP) in Ministry of Justice and Human Rights of the Republic of Indonesia can be increased.

The recording of license agreement is made to: 1) Copyright and Related Rights; 2) Patent; 3) Brand; 4) Industrial Design; 5) Layout Design of Integrated Circuits; and 6) Trade Secrets.

The application for the registration of a license agreement shall be made on the basis of the application of the licensor, the licensee or the proxy (“applicant”), and shall be charged in accordance with the laws and regulations in the field of non-tax state revenue applicable to Ministry of Justice and Human Rights of the Republic of Indonesia. The application for registration of license agreements shall be undertaken by the Applicant and shall be submitted in writing to ministers which may be done electronically or non-electronically. Electronic registration may be made through the official website or website of the Directorate General of Intellectual Property, if conducting through non-electronic registration; the submission shall be made in writing.

The documents to be attached are as follows: 

a) Copy of license agreement or proof of license agreement;

b) Copies or excerpts of patent certificates, brands, industrial designs, integrated circuit layout designs or proof of copyright ownership, related rights, and trade secrets are still valid;

c) Originally a special power of attorney, if the petition is filed by a power of attorney; and;

d) Original proof of payment of license application license registration fee.

The applicant must also fill out an electronic statement form (if through the website) or make a statement that the license agreement listed is an intellectual property object that:

a) Still in the period of protection;

b) Not harming national economic interests;

c) Does not hamper technological development; and

d) Not contrary to the provisions of legislation, morals, and public order.

Any application for registration of license agreement shall be checked for completeness. The examination shall be conducted within a maximum period of 10 days from the date of receipt of the document. In case of any deficiencies in the completeness of the requirements document, the Minister shall return the application to the applicant and shall be given a period of no more than 10 (ten) days from the date of notification of the lack of completeness of the requirements document. If within that time the requirements document is not completed then the application is considered withdrawn. If the document is complete then the minister will

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11 Audah Husain, *Hak Cipta & Karya Cipta Musik*, PT. Pustaka Litera Antara Nusa, Bogor, 2004., hlm. 56
12 Djumahana Muhammad, *Hak Miik Intelektual, Sejarah, teori dan prakteknya di Indonesia*, Citra Aditya Bakti, Bandung, 2003., hlm. 43
register the license agreement and announce the registration of the license agreement in the official page of the Directorate General of Intellectual Property.

Whereas if the application for registration by a foreign citizen or the object of recording of a license agreement belongs to a foreign citizen then the application for execution shall be done by an intellectual property consultant domiciled in Indonesia.

The license recording period shall be valid for a period of 5 years and when terminated then the applicant may reapply for a fee in accordance with the provisions of the laws and regulations applicable to the Ministry of Justice and Human Rights of the Republic of Indonesia.

IV. KESIMPULAN

Based on the results of the study can be concluded Legal Protection on the website in preventing the occurrence of violations in cyberspace is by way of Through Copyright Registration, although the Registration of copyright is not mandatory, but Registration of copyright on the website should be submitted by the copyright holder once a website is ready to serve or published, to obtain legal protection for the copyright holders of the website, especially in the case of the defense of rights in case of any future dispute or piracy of the copyrighted work of the Website and the Existence and the Role of the license agreement in particular the copyright license is the hijacking of a copyrighted work may be reduced, so the creator can announce and or reproduce his creations to others who wish to use his creation. Both the licensor and the licensee will benefit from the creation. Ultimately, the copyright license may encourage fair and honest business competition and the License Agreement Model which can protect the Third Party shall meet the elements of Article 1320 of the Civil Code and Article 1338 of the Civil Code which appear to be easy and concise in its application, contains many legal implications that need attention, because it concerns the rights of consumers who must be protected in the contents of the agreement.

13 Ibid
14 Ibid
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