

LEGAL PROTECTION OF SCIENTIFIC COPYRIGHTS FOR SUSTAINABLE DEVELOPMENT GOALS

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Abstract

Quality education is the fourth goal of sustainable development. The Pirate Bay of Science has taken over more than 48 million journals, and nearly every published peer-reviewed research is now accessible online. According to Article 27 of the United Nations Declaration of Human Rights (UNDHR), everyone has the right to participate in the cultural life of education and knowledge. All articles owned by researchers and published on the internet do not pay royalties to researchers. In the music and film industry, creators receive royalties for every copy sold or accessed through internet sites. Then, how does the Indonesian Copyright Law regulate the protection of scientific work? The research methodology used is normative juridical, with descriptive-analytic specifications. The research results show that there are exceptions to the Indonesian Copyright Law. Article 44(1) of the Indonesian Copyright Law (UUHC), authors often question this restriction of The Pirates Bay of sciences to educational interests. The restriction on exceptions or fair use in the Copyright Law is interpreted as long as it does not harm the economic benefit of the creator. However, there is no explanation of definitions, criteria and limitations that can be used for work for education as one of the Copyright exceptions.

1. INTRODUCTION

Education is one of the essential keys to a country's sustainable development. However, in practice, the investment in education is not accompanied by support like other aspects that support human welfare (Xiang et al., 2023). The education provided aims to optimize the full potential of individuals and countries so that they can be responsible for ensuring that the latest technology does not exacerbate inequality. Education can utilize digital technology to transmit knowledge, values and skills in various places, times and generations, which are used as a basis for future development (Nasution et al., 2022).

One of the 2023 agendas launched by the United Nations is Sustainable Development. In this context, regulations that bind intellectual property, including the



development of innovation and technology, must support sustainable development by not overriding the privileges of copyright owners.

Academic publishing started following the music industry's business in the late 1990s, in which journals were charged per copy or access request. In recent years, many methods and sites have emerged that provide free alternatives, both legal and illegal. Academic publishers responded by filing the same lawsuits the music industry did rather than adopting a new view.

The publisher of the chemical journal, the American Chemical Society, filed a lawsuit in US federal court asking search engines and internet service providers to take down the site piracy service for academic research, Sci-Hub. Publisher also sued for damages of USD 4.8 million for copyright infringement, but Sci-Hub did not respond to the lawsuit and did not appear in court.

The Sci-Hub site is required to pay a fine of USD 15 million to Elsevier for Copyright infringement. However, the owner and manager of the site, Alexandra Elbakyan, is a citizen of Kazakhstan living in Russia who is not under the jurisdiction of the United States of America, nor does she own assets in the United States. It is doubtful that Elsevier will get the compensation demanded.

A recent study reported that as much as 68.9% of academic research is freely accessible on the internet, whereas almost 85.2% of this research was only published on paid sites. The repository on Sci-Hub includes many articles that are usually accessed for free. One only needs to have credential codes such as DOI addresses to access the articles provided by services such as JSTOR, elsevier, sage, and others. Daniel Himmelstein of the University of Pennsylvania stated that the database language adopted by the Sci-Hub website is "unsustainable" subscriptions.

In 2015, the academic publishing industry's annual income was approximately \$25.2 billion. Academic publishers' subscription rates have climbed so much recently that even wealthy American colleges complain they can no longer afford it. When the Harvard Library reported in a 2012 memo that its subscription prices had reached \$3.5 million per year, it declared the payments were "fiscally unsustainable." The university requested its academics to stop publishing research in journals under paywalls.

Elbakyan started Sci-Hub in 2011, initially at sci-hub.org, and has been forced to step down due to court and law enforcement demands, but has changed his domain address multiple times. The site is currently only accessible through the dark web, and the encrypted messaging software Telegram and bitcoin contributions



exclusively support it. Freedom of speech, teaching and learning has many obstacles and challenges. This is because the ideas expressed by academics have now been commercialized, so the web or sources of ideas cannot be accessed for free (Oleksiyenko & Jackson, 2021).

Copyright infringement, or piracy, follow to Black's Law Dictionary, Unauthorized use of copyrighted material or use without the permission of the copyright owner (Palmer, 2000). Copyright is a right that is immediately obtained when the creator of a creative work produced in the form of a book, music, film, and the like. The perpetrators of piracy very easily copy creative works due to the very easy misuse of technology. The convenience provided by digital technology and the growth of the internet facilitates the easy dissemination of creative or copyrighted works without incurring any costs.

The Svenska AntiPiratbyrå organization or Rights Alliance formed in 2001 Its functions include publicizing copyright issues and combating copyright infringement could not stop The Pirate Bay from forming. The pirate bay, which was formed by Piratbyrå in 2003 and lasted until 2010, distributes copyrighted works and shares technological information for free. In addition, other projects include the establishment of The Missionary Church of Kopimism, a bus tourthrough Europe to Manifesta 08, and the Pirate Party.

Indonesia does not yet have a copyright law that regulates exactly about copyright infringement, such as The Pirate Bay of Science, which causes the ease of others to make piracy oncopyright work. According to Article 1 of the Copyright Law (UUHC), Copyright is an exclusive right for the creator/owners that originates essentially based on a declaratory principle when the work is manifested in a physical form without lessening the constraints imposed by laws and regulations. The creator of the work has the right to have the exclusive rights obtained when the work has the right to be created. These rights include economic rights, where other parties are not permitted to be misused such as part and even full profits that can cause financial losses of the creator (Kumagai, 2008).

Many things are considered in the regulations governing copyright. Both on the side of the creator's disadvantage and the progress of research, research, and innovation in the advancement of education. However, the ratification of international treaties and their alignment with Indonesian law is expected to balance the rights of creators or copyright holders and the public interest, especially for education.



This article aims explicitly to analyze what is meant by scientific copyright protection for sustainable development purposes. This article also discusses several references to implementing rules and specific guidelines to act as a code of ethics in the legal protection of scientific copyrights for sustainable development. Several legal issues will be discussed in this article: How does Indonesian law on intellectual property protect scientific works?

2. METHODS

This study review is conducted utilizing normative legal research methodologies focusing on norm ambiguity, namely a legal and conceptual approach. Tracing legal materials employs a literature review followed by qualitative research analysis.

3. RESULTS AND DISCUSSION

The Indonesian government has been a member of the World Trade Organization (WTO) since 1995 and has ratified the WTO agreement through Law No. 7 of 1994 concerning Ratification of the World Trade Organization Agreement (Pasundan, 2020). Indonesia has also ratified several important treaties and conventions such as the Berne Convention for the Protection of Literary and Artistic Works and the World Intellectual Property Organization Copyright Treaty of 1996 (Kumagai, 2008). The guarantee aims to provide a consistent view of intellectual property law particularly when defining the law of copyrighted works. The law in practice is to recognize and accept the decision-making process and decision-making mechanism of the Bern Convention as Indonesian law in the WTO Agreement and the WIPO Copyright Agreement. In practice, the law applied is the ratification and adoption of procedures and mechanisms of Indonesian law, the WTO agreement, and the results of the Bern convention in the WIPO copyright agreement (Rahman, 2020).

The Indonesia Copyright Act 2014 UUHC should refer to the United States Copyright Act 1976. Even though the system is common law, US policy in this area relates to international accords. As a result, a copyright exemption is referred to as fair use. In consideration of fairness among creators and users, this concept holds



that third parties may be allowed to utilize copyrighted works without the authorization or permission of the creator or copyright holder within certain restrictions. This fair use theory allows for the restricted and fair use of literary works for specific purposes without royalties or author agreement. In general, the fair use doctrine contributes to solid economic interests for the company, but the owner of personal rights sacrifices (Maharditha & Sukro, 2018). This goal is explicitly stated in Article 107 of the Copyright Act of 1976, which specifies the standards for assessing fair usage. Four factors explain, namely: (1) the purpose and character of the use where it is questioned whether the purpose of the use is for commercialization or non-profit education, (2) the property of the work, (3) the amount or substantial part of the copyrighted work being utilized, and (4) the economic rights impacted as a result of the use of the copyrighted work. All the factors mentioned are interconnected and conflate to declare a copyrighted work used to be included in the category of fair use.

Copyright protection of scientific journals is an obligation when viewed with the theory of reward by Robert M. Sherwood, who said that the creator of the work is given protection because it is an award for the effort or effort. According to the Theory of Recovery, when a person or creator works on an intellectual copyright work, a sacrifice is made and expended, both time, cost, and energy. It is only natural for a person or creator to be rewarded as a tradeoff (Barizah, 2016).

Copyright is the exclusive right of the creator granted by law in accordance with the express principle when the express/work is incorporated in a specific form against any caveats or restrictions prescribed in the provisions of law and guidelines. Without trespassing, in 28/2014 on copyright (Indonesian copyright Law). This regulation was adopted because copyright keep plays a strategic role in economic development and prosperity (Barizah, 2016). Then, copyright law is a right that can protect creators from the manifestation of their ideas and mental creations. The protection provided or shaded by the proper law can encourage the country's emergence of educational innovations and economic progress, contributing to society. In the short-run, copyright protection generates more revenue for the copyright holder as rewards or repayments. Whereas in the long run, copyright protection provides greater incentives to supply creative works in the future (Ahmad et al., 2020).

In the copyright law applicable in Indonesia, certain things are regulated as



"not infringing copyright" or known as fair use. Articles 43 to 51 of the Indonesian Copyright Law (UUHC) govern fair use as a copyright restriction. Article 44 (UUHC) states that the use, re-creation, reproduction, copying, and altering of copyrighted works in whole or in part is not regarded as copyright infringement if the source is cited or mentioned in whole. Also, for education, training, research, logical preparation, report preparation, preparation of studies or audits of a problem, and discussion by the ultimate goal of education and science without jeopardizing the Author's and/or Copyright Holder's legitimate interests. Obtaining copyrighted works for visually impaired or disabled individuals, as well as users of Braille, audiobooks, or other media, is not considered a copyright violation provided the source is fully cited or referenced, except for commercial purposes. Article 47 of the Indonesian Copyright Law (UUHC) states that each library or non-commercial archival organization may reproduce 1 (one) copy of a copyrighted work or part of a copyrighted work for general educational purposes without the permission of the creator or copyright owner. A copyrighted work may be distributed, summarized, or duplicated as long as the library or archival institution can guarantee that it will be used for educational or research purposes. An independent party reproduces all or part of a copyrighted work without any economic impact so it does not require permission from the creator.

Although fair use exceptions are intended to be broad and flexible, Indonesia's Copyright Law covers important exceptions for non-commercial educational and scientific purposes, as well as the context of public library archives and research and development activities, as long as they do not jeopardize reasonable interests. The creator can profit economically from his invention (Nugroho and Utama, 2020). However, in the age of digital learning, it is critical to develop particular requirements, implement legislation, and support technical infrastructure to ensure the success of adopting fair use in teaching, research, and other educational objectives. Indonesia's Copyright Law is hampering Indonesia's development and keeps Indonesia stuck as a developing country in terms of technology. Indonesia ranks 4th as the country that violates the most copyright laws in the world. This results in copyright law being incapable of encouraging stakeholders to make technological innovations due to regulatory restrictions (Nugroho and Utama, 2020).

This restriction is frequently questioned, particularly by creators, in connection to the pirate bay of science for educational purposes, which is exempted by Article



44 (1) of the Indonesian Copyright Act (UUHC). This regulation is mainly concerned with qualitative constraints. This is due to the article's failure to describe the definition, criteria, and rules for using work for educational purposes as one of the exceptions to Copyright. This section does not discuss the meaning or standard for academic reasons, whether commercial or non-commercial or for educational purposes for private or public interests. However, even if used for personal or non-commercial purposes, it must not cause harm to the Author or copyright holder.

It is allowed to reproduce 1 (one) complete copy of a work or part of a work by a non-commercial library or archival institution. This is permissible as long as it is for educational, teaching and research purposes or for security needs such as replacing a copy of a work due to loss, damage or destruction of the permanent work [10]. Fair use of works can be used as a means of communication and a source of information between libraries and archival organizations.

Copyrights and related rights, such as the economic rights of creators, phonogram makers, broadcasting stations, as well as copyrighted works or related works, are protected by Indonesian copyright law and are allowed to be used by other parties as long as they are under reasonable use. The Indonesian Copyright Law provides for the protection of works and the restriction of related works if interested parties are allowed to apply the use of short parts of works and/or copyright objects related to the actual events that are expected to inform regardless of the authorization of the right holder. The Pirate Bay is managed by non-Piratbyrån individuals and organizations who need funds to keep the site running. For this, they accept outside funding or donations and also post advertisements with payments in cryptocurrency on their website.

4. CONCLUSIONS

Article 44 paragraph (1) letter a and c of the Indonesian Copyright Law (UUHC) explains that several things that may constitute copyright infringement include the use, restoration, manufacture and addition of changes to works or related copyrights. Actions that do not include copyright infringement if a copyrighted work is referred to in whole or in part for the purposes of education, research, preparation of reports, investigations, or surveys within the limits of fair use as a means of providing information and knowledge.



Scientific and literary works can be translated or reproduced for education, knowledge, research, and development, provided they are required to apply for a permit from the minister as regulated in Copyright Law number 28/2014 (UUHC). UUHC, on the other hand, is a strict and comprehensive application of fair use laws for education. In the context of education, there is no further explanation of Copyright exceptions which include the meaning, criteria, and quantitative and qualitative limits on the use of copyrighted works that can be reproduced or incorporated into other works. There is no legislative regulation governing the fair use of copyrighted works. Further, there is also no organization or institution charged with the responsibility of regulating, fostering, and guiding the promotion, access, and fair use of copyrighted works for educational purposes.

5. REFERENCES

Ahmad H, Ramli M, Fauza Mayana R and Santika T (2020). Fostering a Creative Economy with Copyright Protection: “Weightless Economy” And Creativity-Based. *Sustainable Development*. 10(1). 92-119.

Barizah N (2016) International Copyright Treaties And Its Implementation Under Indonesian Copyright Act; Is It A Better Access To Knowledge? 1 vol 14

Kumagai K (2008) Japan Patent Office Intellectual Property Systems in Asian Countries. Japan Patent Office. Tokyo.

Maharditha Y and Sukro A Y (2018) Perlindungan Hukum Hak Kekayaan Intelektual Melalui Mekanisme “Cross Border Measure. *Jurnal Ilmiah Ilmu Hukum QISTIE* 11

Nasution, A.A., Erlina, & Atmanegara., A.W (2022). Learning Validation Control and Input Error Correction on Implementation of Computer Assisted Audit Techniques (CAATS) (Review New Trends in Sustainable Development of Learning Education Management Models for the Accounting Student). *Webology*. 19(1). 1850-1861. DOI: 10.14704/WEB/V19I1/WEB19124. <https://www.webology.org/abstract.php?id=887>

Nugroho B S F and Utama M A R (2020). Legal Protection of Copyright in the Globalization Era: A Comparison of Indonesia and China Journal of Law and Legal Reform 1

Oleksiyenko A v. and Jackson L (2021) Freedom of speech, freedom to teach, freedom to learn: The crisis of higher education in the post-truth era Educational *Philosophy and Theory*. 53 1057–62

Palmeter D (2000). The WTO as a Legal System The WTO as a Legal System THE WTO AS A LEGAL SYSTEM vol 24

Pasundan U (2020) Dysfunctional Regulations and Ineffective Implementation of Intellectual Property Rights-Based Banking Collateral: A Critical Analytical Study Sustainable Use of Genetic Resources & Traditional Knowledge from the Perspective of Intellectual Property Rights and Bioethics View project Tisni Santika.



Rahman R A (2020) Should Indonesian Copyright Law be Amended Due to Artificial Intelligence Development?: Lesson Learned from Japan NTUT *Journal of Intellectual Property Law and Management*. **9** 34–57

Xiang, H.; Lu, J.; Kosov, M.E.; Volkova, M.V.; Ponkratov, V.V.; Masterov, A.I.; Elyakova, I.D.; Popkov, S.Y.; Taburov, D.Y.; Lazareva, N.V.; Vasiljeva, M.V.; Zekiy, A.O. (2023). Sustainable Development of Employee Lifecycle Management in the Age of Global Challenges: Evidence from China, Russia, and Indonesia. *Sustainability*, 15, 4987. <https://doi.org/10.3390/su15064987>