

LEGAL REGULATIONS COPYRIGHT TRANSITION AT PERSPECTIVE IUS CONSTITUENDUM

Anak Agung Sagung Ngurah Indradewi
Faculty of Law, University of Dwijendra Bali
Kamboja Road No. 17 Denpasar Bali
Email : sagungindradewi@gmail.com

ABSTRAK

Pencabutan Undang-Undang Nomor 19 Tahun 2002 tentang Hak Cipta atas lahirnya undang-undang hak cipta yang baru yaitu Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dengan sendirinya akan membawa perubahan mendasar pada pengaturan hak cipta di Indonesia. Salah satunya dalam ketentuan Pasal 16 ayat (2) Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, disebutkan bahwa Hak Cipta dapat dialihkan atau dialihkan, baik seluruhnya maupun sebagian karena: a. warisan; b. hibah; c. wakaf; d. akan; e. kesepakatan tertulis; atau f. alasan lain yang dibenarkan sesuai dengan ketentuan perundang-undangan. Secara khusus dalam ketentuan Pasal 16 ayat (2) huruf f Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta disebutkan bahwa "alasan lain yang dapat dibenarkan sesuai dengan ketentuan peraturan perundang-undangan". Pengertian frasa " karena alasan lain " menimbulkan multitafsir asalkan dibenarkan oleh peraturan perundang-undangan, sehingga perlu dipertanyakan peraturan perundang-undangan mana yang dijadikan tolok ukur agar frasa terkait hak cipta dapat menjadi acuan. dialihkan atau dialihkan, baik seluruhnya maupun sebagian karena alasan lain yang dapat dipertanggungjawabkan sesuai dengan ketentuan peraturan perundang-undangan. Substansi asli pasal 16 ayat (2) huruf f Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta yang menyebutkan hak cipta dapat dialihkan atau dialihkan, baik seluruhnya maupun sebagian karena alasan lain yang dibenarkan sesuai dengan ketentuan peraturan perundang-undangan, dalam hal ini kasus yang menyebabkan norma kabur (vague norm) yang berakibat pada munculnya ketidakpastian hukum tentang regulasi pasal tersebut.

Kata Kunci: Regulasi Hukum, Peralihan Hak Cipta, Perspektif Ius Constituendum.

ABSTRACT

Revocation of Law Number 19 of 2002 concerning Copyright for the birth of a new copyright law namely Law Number 28 of 2014 concerning Copyright will automatically bring fundamental changes to the regulation of copyright in Indonesia. One of them is in the provision of Article 16 paragraph (2) of Law No. 28 of 2014 concerning Copyright, states that Copyright can be transferred or transferred, either in whole or in part because: a. inheritance; b. grant; c. waqf; d. will; e. written agreement; or f. other reasons that are justified in accordance with statutory provisions. Specifically in the provision of Article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, it is stated that "other reasons are justified in accordance with statutory provisions." The meaning of the phrase " for other reasons " gives rise to multiple interpretations as long as it is justified by the laws and regulations, so it should be questioned which laws and regulations are used as benchmarks for the phrase related to copyright can be transferred or transferred, either in whole or in part because other reasons that are justified in accordance with statutory provisions. Substance in original article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyright which mentions copyright can be transferred or transferred, either in whole

or in part due to other reasons that are justified in accordance with statutory provisions, in this case causing vague norms (vague norm) which results in the emergence of legal uncertainty about the regulation that article.

Keywords: Legal Regulations, Copyright Transition, Perspective Ius Constituendum.

Introduction

Background

The Government of Indonesia has issued Law Number 28 of 2014 concerning Copyright which in principle revokes Law Number 19 of 2002 concerning Copyright. Copyright is one part of intellectual property that has the broadest scope of protected objects, because it includes science, art and literature (art and literary) which includes computer programs. The development of the creative economy which is one of the mainstays of Indonesia and various countries and the rapid development of information and communication technology requires the renewal of the Copyright Act, bearing in mind that Copyright is the most important basis of the national creative economy.

Copyright which is part of intellectual property rights (IPR) is basically a private right (civil), in the sense that someone is free to submit an application for registration and protection of his IPR or not.¹ If it is not done he will not be prosecuted for anything, but he will lose himself if others arbitrarily take advantage of or even acknowledge his work.

Intellectual property rights, which are abbreviated as IPR, are the equivalent words commonly used for Intellectual Property Rights, namely "a right that arises for the results of ideas that produce a product that is beneficial to human".² Intellectual Property Rights is closely related to copyright, this is because copyright is a right that arises from the results of thought.

Revocation of Law Number 19 Year 2002 concerning Copyright for the birth of a new copyright law namely Law Number 28 Year 2014 concerning Copyright will automatically bring fundamental changes to the regulation of copyright in Indonesia. One of them is in the provision of Article 16 paragraph (2) of Law No. 28 of 2014 concerning Copyright, states that Copyright can be transferred or transferred, either in whole or in part because: a. inheritance; b. grant; c. waqf; d. will; e. written agreement; or f other justified reasons in accordance with statutory provisions.

Specifically in the provision of Article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, it is stated that "other reasons are justified in accordance with statutory provisions." The meaning of the phrase "for other reasons" gives rise to multiple interpretations as long as it is justified by the laws and regulations, so it should be questioned which laws and regulations are used as benchmarks for that phrase related to copyright can be transferred or transferred, either in whole or in part because other reasons that are justified in accordance with statutory provisions. Substance in original article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyright which mentions copyright can be transferred or transferred, either in whole or in part due to other justified reasons in accordance with statutory provisions, in this case it creates a vague norm (vague norm) which results in legal uncertainty arising from the regulation of the article.

If the law has determined certain patterns of behavior, then everyone should behave according to the predetermined pattern. In line with Hans Kelsen, Gustav Radbruch is of the view that the law must contain 3 (three) values of identity, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal justice (*gerechtigheid*), and the principle of legal usefulness

¹ Haris Munandar and Sally Sitanggang, 2009, *Knowing Intellectual Property Rights: Copyright, Patents, Trademarks and Details*, Erlangga Publisher, Jakarta, p. 2-3.

² *Ibid.*, p. 3

(zwechtigheid).³ The explanation of the legal theory is related to the substance of the regulation in Article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, a legal certainty is needed for the meaning of the phrase " another cause ".

Whereas in this case it creates a vague norm which results in legal uncertainty regarding the regulation of the article, a revision of the copyright transfer regulation in the future (*ius constituendum*) is needed in order to create a legal certainty and does not create a vague norm (vague) norm) of copyright transfer. Based on the description of the background of the problem above, the writer in this study seeks to analyze with the title Arrangement of copyright transfer law in the perspective of *ius constituendum*.

Problem Formulation.

What is the legal substance of the regulation of copyright transfer in the perspective of the *ius constituendum*?

Research Methods.

This research uses normative juridical legal research type that is studying and analyzing legal materials and issues based on statutory regulations. This research was conducted to solve legal problems that arise while the results to be achieved are prescriptions about what should be done.⁴ In this case the study of legal arrangements on the transfer of copyright in the perspective of the *ius constituendum*.

The method used in this study uses several techniques as follows:

a. Statute Approach

The approach using legislation and regulation. Legal research at the level of legal dogmatics cannot escape from the legislative approach because the subject matter examined is derived from statutory regulations. The law approach is carried out by examining all laws and regulations relating to the legal arrangements of copyright transfer in the perspective of the *ius constituendum*.

To learn whether there is consistency and suitability between a law with other laws, or between laws with the constitution or between regulations and laws.

b. Conceptual Approach

The approach that moves from the views and doctrines that develop in the science of law, in order to find ideas that give birth to legal understandings, and the principles of law or legal arguments that are the back of researchers to build legal arguments in solving issues faced.⁵ This conceptual approach is used to discover the views and doctrines that develop in the science of law, the study of legal principles relating to the regulation of law in the transfer of copyright in the perspective of the *ius constituendum*.

Discussion

The substance of the law regulates the transfer of copyright in the perspective of *ius constituendum*.

Ius constituendum is a law aspired to by the association of life and the State, but it is not yet a rule in the form of a law or various other provisions. *Ius Constituendum* can also be interpreted as a law which is expected to apply in the future. Literally *ius constituendum* is a law that should apply, which includes two meanings, namely what and how the law should be determined and what and how the law was determined.

³ Bernard L. Tanya, 2010, *Legal Theory of Orderly Human Strategy across Spaces and Generations*, Genta Publishing, Yogyakarta, p. 127.

⁴ Peter Mahmud Marzuki, 2005, *Legal research*, Prenada Media, Jakarta, p. 7

⁵ *Ibid*, p .95.

According to Soerjono Soekanto and Purnadi Purbacaraka it was explained that:⁶

1. *Ius constitutum* is a law that is formed and applies in a state society at a time. *Ius constitutum* is a positive law.
2. *Ius constituendum* is a law aspired to in the life of the state, but has not yet been formed into a law or other provisions.

The distinction between *ius constitutum* and *ius constituendum* rests on the time factor - the present and the future. In this case, law is defined as a legal system that is identified with positive legal terms. The tendency of this understanding is very strong, because certain circles argue that "After promulgation, the *ius constituendum* becomes *ius constitutum*".⁷

Related to the legal substance of the regulation of copyright transfer in the perspective of the *ius constituendum*, in this case the substance of article 16 paragraph (2) of Law No. 28 of 2014 concerning Copyright, states that Copyright can be transferred or transferred, either in whole or in part because: a. inheritance; b. grant; c. waqf; d. will; e. written agreement; or f. other reasons that are justified in accordance with statutory provisions.

Specifically in the provision of Article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, it is stated that "other reasons are justified in accordance with statutory provisions." The meaning of the phrase 'another cause' gives rise to multiple interpretations as long as it is justified by statutory regulations, it is appropriate to question the statutory regulations which are used as benchmarks for the phrase related to copyright can be transferred or transferred, either in whole or in part for other justified reasons in accordance with the provisions of the legislation.

Article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyright which mentions copyrights may be transferred or transferred, either in whole or in part for other reasons that are justified in accordance with statutory provisions, in this case causing vague norms (vague norm) which results in legal uncertainty arising from the regulation that article.

Although in the explanation of article 16 paragraph (2) letter f Law No. 28 of 2014 concerning Copyrights, it is explained that what is meant by "other justified reasons in accordance with statutory provisions" include, transfers caused by court decisions that have obtained permanent legal force, mergers, acquisitions, or liquidation of companies or entities the law in which the company assets are merged or separated.

Whereas from the explanation according to the opinion of the writer there is still a multi-interpretation space which results in the blurring of norms, this is because although it is clearly mentioned the transfer caused by a court decision which has obtained permanent legal force (*inkrah*) can certainly be clearly understood, but with the addition of the phrase explanation "Mergers, acquisitions or liquidation of companies or legal entities" matters resulting in complexity to the meaning of "other causes" referred to in that article.

In my opinion, the need for a revision of the phrase in article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, it is stated that "other reasons are justified in accordance with statutory provisions." It should be changed to "transfer of copyrights based on court decisions that have obtained permanent legal force". The word "other cause" is removed so as not to cause multiple interpretations which results in the emergence of vague norm.

The author's reasoning is based on the method of interpretation or interpretation of juridical hermeneutics, which is a method for interpreting the text of laws that are unclear, so that these laws can be applied to certain concrete events,⁸ in this context the need for interpretation or interpretation is needed to interpret the text of the law invitation stated in article 16 paragraph (2)

⁶ Soerjono Soekanto and Purnadi Purbacaraka, 1994, *Various Ways of Legal Distinction*, PT Citra Aditya Bakti, Bandung, p. 5

⁷ *Ibid.*, p.6.

⁸ Bambang Sutyoso, 2012, *Legal Discovery Method: Efforts to Realize a Certain and Fair Law*, UII Press, Edition Fourth, Yogyakarta, p. 135.

letter f of Law No. 28 of 2014 concerning Copyright. In addition, the need for legal exposition / construction methods is a method that explains the words or forms an understanding (law), the definition of law in question is the construction of law (*rechts constructie*) which are the tools used to compile legal material systematically in the form of good terms.⁹

Compiling here brings together what belongs to the same field, one understanding. In the context of the legal substance of the regulation of copyright transfer in the perspective of the *ius constituendum*, the legal exposition / construction method is needed to explain words or form understanding (law), in the case of " other justified causes in accordance with statutory provisions. ' "It should be changed to" transfer of copyrights based on court decisions that have obtained permanent legal force ". The word "other cause" is removed so as not to cause multiple interpretations which results in the emergence of vague norm.

Copyright is naturally given legal protection because it is part of intellectual property rights in this case IPR as a set of rights granted by law to protect economic investment from creative endeavors.¹⁰ With the phrases that cause the ambiguity of norms in an article regulation related to copyright will result in intellectual property rights in the transfer of copyright does not get maximum legal protection and legal certainty, a revision is needed to provide legal certainty.

Closing

Copyright is one part of intellectual property that has the broadest scope of protected objects, because it includes science, art and literature (art and literary). Revocation of Law Number 19 Year 2002 concerning Copyright for the birth of a new copyright law namely Law Number 28 Year 2014 concerning Copyright will automatically bring fundamental changes to the regulation of copyright in Indonesia. One of them is in the provision of article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyright which mentions copyrights may be transferred or transferred, either in whole or in part due to other justified reasons in accordance with statutory provisions, in this case the phrase "other causes" creates vague norms which result in legal uncertainty arises over the regulation of this article. Although in the explanation of article 16 paragraph (2) letter f Law No. 28 of 2014 concerning Copyrights, it is explained that what is meant by "other justified reasons in accordance with statutory provisions" include, transfers caused by court decisions that have obtained permanent legal force, mergers, acquisitions, or liquidation of companies or entities the law in which the company assets are merged or separated. Whereas from the explanation according to the opinion of the writer there is still a multi-interpretation space which results in the blurring of norms, this is because although it is clearly mentioned the transfer caused by a court decision which has obtained permanent legal force (*inkrah*) certainly can clearly understood, but with the addition of the explanation phrase "merger, acquisition, or dissolution of a company or legal entity" these things cause complexity for the meaning of "other causes" referred to in that article. In my opinion, the need for a revision of the phrase in article 16 paragraph (2) letter f of Law No. 28 of 2014 concerning Copyrights, it is stated that "other reasons are justified in accordance with statutory provisions." It should be changed to "transfer of copyrights based on court decisions that have obtained permanent legal force". The word "other cause" is removed so as not to cause multiple interpretations which results in the emergence of vague norm. The author's reasoning is based on the method of interpretation or interpretation of juridical hermeneutics, which is a method for interpreting unclear legal texts, secondly based on legal exposition / construction methods, namely methods that explain words or form definitions (law), legal sense in question is legal construction (*rechts constructie*), in the context of the legal substance of the regulation of copyright transfer in the perspective of *ius constituendum*, then the legal exposition

⁹ Sudikno Mertokusumo, 1996, *Knowing An Introduction to Law, Liberty*, Yogyakarta, p. 69.

¹⁰ Tomi Suryo Utomo, 2011, *Intellectual Property Rights (IPR) in the Global Era: A Contemporary Study*, Graha Ilmu, Yogyakarta, p. 2

/ construction method is needed to explain words or form understanding (law), in the case of other causes that are justified in accordance with the provisions of the legislation. " Should be changed to "transfer of copyright based on a court decision that has obtained permanent legal force". The word "other cause" is removed so as not to cause multiple interpretations that result in the blurring of norms.

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