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Legal Protection For E-Book Creators On Gramedia Digital Application

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ABSTRAK

Kata Kunci :

Legal Protector, E-Book Creators, Gramedia Digital Application

The advantages of very practical E-Books make the violation of E-Book copying more widespread. One of the studies examined by the author is the E-Book in the Gramedia Digital application. The purpose of this study is to explain how the legal protection of the creator and the legal consequences for the perpetrators as well as the settlement of disputes against the duplication of the ebook creator's work on the digital gramedia application. The research method used is a normative legal research method, with a statutory approach (Statue Approach) and a conceptual approach (Conceptual Approach).

The results obtained from this study found Gramedia Digital provides legal protection in the form of technology that can record and mark traces of user activities which will later be stored as digital track records with the aim of legal protection for the creator of the E-Book itself. The legal consequences of duplicating E-Books on the Gramedia Digital application are subject to soft blocks in the form of suspension and account closure. Gramedia digital explained that they cooperate with any legal process (local law, provincial law and national law). Then the settlement of E-Book disputes is also explained through litigation (court) and non-litigation (outside court).

1. Introduction

Intellectual Property (hereinafter referred to as IP) begins with an understanding of the need for a special form of appreciation for a person's intellectual work and the rights arising from that work. This IP only exists when the human intellectual capacity forms something that can be seen, heard, read, or actually used. Intellectual Property Rights are rights that come from the results of creative activities and the ability of human thought to be disclosed to the public in various forms that are useful and useful in supporting human life, as well as having economic value. Called economic rights because intellectual property is something that can be measured in money. This economic right exists in the form of profits in the amount that the other party receives under the license. Economic rights are taken into account because IP itself can be used or exploited by other parties in industry or trade that brings profits.¹

Not everyone can produce IP, but only people who are able to work their brains can produce material rights which are known as IP. The work of the brain that produces IP is exclusive, where only certain people can give birth to such rights. The exclusive intellectual property rights are a form of appreciation for the results of human intellectuality (in this case the work of the human brain), both in the form of inventions as well as the results of creative and artistic works, especially when the work of the human brain is used for commercial purposes.²

¹ Abdul Kadir Muhammad, 2007, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, Bandung : Citra Aditya Bakti, Hal. 23.

² OK Saidin, 2015, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property*

One category of intellectual property that contributes significantly to improving the quality of human resources is scientific work, especially in the form of books. The results of scientific works can be written in the form of paper books (Printed Books) or digital books (E-Books) in the form of files (pdf, doc, txt) and can be downloaded and read through electronic devices. Each form of this book has its advantages and disadvantages. One of the advantages of printed books circulating in major bookstores is to have and include an International Serial Book Number (hereinafter referred to as ISBN). By having an ISBN, printed books are still trusted to be a reference for academics as a reference in compiling their scientific works.³

E-Book is one of the creation products that is protected by Article 40 Paragraph 1 of Law Number 28 of 2014 concerning Copyright, because E-Book itself is a creation in the form of a copy of the initial creation in the form of a book which has its own Copyright after being realized in the form of a book. Tangible form, because E-Books are objects in the form of electronics or more precisely digital objects, automatically E-Books have the properties of digital objects, namely having electronic data and information.⁴ Based on Article 40 Paragraph (1) UUHC does not explain specifically about protected copyrighted works such as E-Books. The article only mentions about books, and does not discuss how the E-Book protection system is, because the meaning of books is very broad and there are many types.⁵

Rights), Jakarta : Raja Grafindo Perkasa, Hal. 10.

³ Denny Kusmawan, *Perlindungan Hak Cipta Atas Buku*, Jurnal Perspektif, Vol. XIX No. 2, (2014), Hal. 137.

⁴ Arthur Lewis, 2014, *Dasar-Dasar Hukum Bisnis*, Bandung : Nusa Media, Hal. 125.

⁵ Ni Putu Utami Indah Damayanti, A.A.

E-Books do not require paper and ink. This means fewer trees are cut for paper production. The weakness of E-Books is the prevalence of piracy so that not all printed books also have an electronic version. If the media used to store E-Books is damaged by software/hardware, our collection of E-Books will also be lost. Although sometimes defined as an electronic version of a printed book, many E-Books exist without a printed book. E-Books are produced and sold commercially through online sales, and these E-Books are usually intended for use or reading on a special device (E-Reader). But now, almost any complex electronic device can have a controlled display, including computers, tablets and smartphones that can also be used to read E-Books. Some examples of well-known E-Book formats include EPUB (Electronic Publication), AZW (Amazon World), KF8 (Kindle Fire), and PDF (Portable Document Format).⁶ These E-Book formats are publications in digital form, which consist of text, images, or both, which can be read on a computer or other electronic device.

The government has facilitated the use of content on the internet with copyright restriction regulations in Article 43 Letter (d) and Article 44 of Law Number 28 of 2014 concerning Copyright, the use of a work is not considered a copyright infringement if the source is

Sri Indrawati, dan A.A. Sagung Wiratni Darmadi, "*Karya Cipta Electronic Book (E-Book): Studi Normatif Perlindungan Hak Ekonomi Pencipta.*" Jurnal Kertha Semaya, Denpasar, Vol. 3, No. 3, (2015), Hal. 1-16.

⁶ Ario Adi Prakoso, "*Implementasi Undang-Undang Hak Cipta No. 28 Tahun 2014 pada Aktivitas Reprografi Koleksi Digital.*", Lentera Pustaka : Jurnal Kajian Ilmu Perpustakaan, Informasi dan Kearsipan Vol. 5, No. 1, (2019), Hal. 21-31.

clearly stated or stated and it is limited to non-commercial activities including for social, educational and scientific activities without harming the legitimate interests of the creator. A work as affirmed in the Copyright Law is the result of each author's work in a unique form and shows its authenticity in the fields of science, art and literature.⁷

It is unavoidable if people freely share electronic books with each other in the digital era as it is today, both interpersonally and openly to the public through websites, weblogs, or social media on the Internet, this fact occurs because of the views of some people who think that the interests of the community to gain access to knowledge should be prioritized over the rights of copyright owners, especially economic rights. There is an opinion that basically moral rights are actually more important to the creator than economic rights, such as the opinion of Catherine Colston in Ignatius Haryanto: "In the concept of copyright as part of intellectual property, there are economic incentives or rewards for someone's work, but More importantly what a creator wants is the reputation and integrity of the work produced. When a work is presented to the public, the creator wants his name to be attached to the work that has been produced."⁸

The purpose of legal protection in an effort to protect copyright is to increase economic income as well as to develop the creativity of creators in creating and guaranteeing the protection of one's copyrighted work, especially in the form of

⁷ Ajip Rosidi, 2002, *Undang-Undang Hak Cipta Pandangan Awam*, Jakarta : Djambatan, Hal. 18.

⁸ Ignatius Haryanto, 2014, *Sesat Pikir Kekayaan Intelektual*, Jakarta : KPG, Hal. 80.

infringement of copyrighted works. The law recognizes that copyright is born from the moment the creation is completed. In accordance with the purpose of copyright law protection, namely to prevent the occurrence of a legal event that is detrimental to the creator.⁹

2. Results And Discussion

a. Legal Protection for E-Book Creators in Gramedia Digital Application

Legal protection itself is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal aid.¹⁰

As the creator of the E-Book work, of course, you will feel disadvantaged when your work is intentionally duplicated by other people who try to steal the profits from the copying, therefore the creator of the E-Book can ask for accountability for the economic rights he has obtained for his work. The provisions regarding this compensation are stated in Article 99 Paragraph (1) of Law Number 28 of 2014. According to the provisions of Article 99 Paragraph (2) of Law Number 28 of 2014 it is stated that: "The claim for compensation as referred to in Paragraph (1) can be in the form of a request to surrender all or part of the income that has

⁹ Mieke Komar Kantaadmadja dan Ahmad M. Ramli, 2007, *Perlindungan Atas Hak Kekayaan Intelektual Masa Kini Dan Tantangan Menghadapi Era Globalisasi Abad 21*, Bandung : Alumni, Hal. 40.

¹⁰ Soerjono Soekanto, 1984, *Pengantar Penelitian Hukum*, Jakarta : UI Press, Hal.133.

been obtained from holding lectures, scientific meetings, performances or exhibitions of works that are the result of copyright infringement or related rights products.¹¹

One form of legal protection that Gramedia Digital can provide to creators is by developing internet security in the form of cookies and other technologies such as web beacons. Cookies are a term for a collection of information that contains a track record and activity when browsing a website. With cookies, users who access the E-Book via the website or the internet will automatically store user data for security purposes. In simple terms, a cookie is a collection of data that a computer receives from a site and sends it back to the site it visits. While a web beacon or web marker is one of various techniques used in web pages and e-mails to indicate that a user has accessed certain content. Web icons are generally used by third parties to monitor user activity on a website for the purpose of web analytics or web bookmarks. This technology helps Gramedia Digital to understand user behavior, informs Gramedia Digital which parts of the website people visit, and facilitates and measures the effectiveness of advertisements and web searches. Gramedia Digital will handle a number of information that will be collected by cookies and other technologies as non-personal information. However, as long as an IP (Internet Protocol) address or similar identifier is considered personal information by law, Gramedia Digital will also treat that identifier as personal information. In addition, as long as non-personal information is combined with personal information, Gramedia Digital will also treat the combined information as personal

¹¹ Lihat Pasal 99 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.

information for security purposes.

In addition, Gramedia Digital also collects some information automatically

and stores it in a log file. This information

includes IP (Internet Protocol) addresses, browser type and language, Internet service provider (ISP), referral and exit websites and applications, operating system, date/time label, and clickstream data.

Gramedia Digital uses this information with the aim of understanding and analyzing trends, running the site,

studying user behavior on the site,

improving products and services with the aim of minimizing E-Book duplication, and collecting demographic information about Gramedia Digital's user base as a

whole. Gramedia Asri Media or its

affiliated companies in the Kompas Gramedia Group also use watermarks containing user's personal information and non-personal information to prevent the use of illegal products, services, and content that violates the rights of other parties. This means, in this case, Gramedia Digital has recorded all databases and user behavior in the event of any violation, including strict and strict copying of E-Books through digital technology traces made in layers above. Looking at the cases of copyright infringement of digital works in Indonesia, it is appropriate for Gramedia Digital to continue to pay attention and develop law enforcement based on digital technology to become a very important concern.

From this legal protection, it means that copyright is a natural right, and according to this principle, it is absolute, and its rights are protected for as long as

committed by anyone. Thus an absolute right has a reverse side (passive aspect), that for everyone there is an obligation to

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respect that right. Copyrighted works that

are announced to the general public, can immediately obtain copyright protection. This automatic protection of copyright is based on the Berne Convention. The principle of automatically protection adopted by the Berne Convention, based on this concept, registering a work is not an absolute obligation, but rather a facultative

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thing. A work gets copyright protection

according to Miller and Davis based on the criteria for originality. The element of authenticity in copyright when the creation is a result of creativity that shows

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uniqueness and is personal. The concept

the creator lives and for several years after that. As an absolute right, that right can basically be defended against anyone, who has that right can sue any violation

of this protection means that copyrights may or may not be registered.

b. Legal Consequences and Dispute Resolution of E-Book Copying on Gramedia Digital Application

In summary, the factors that cause criminal acts in the field of copyright can be caused, among others, to seek financial gain quickly by ignoring the interests of copyright holders. The impact of these criminal activities has been so great on the order of the nation's life in the economic and legal fields.¹⁵ Ismail Saleh said that the light sentence imposed in piracy cases is one of the reasons for the high number of piracy cases, one of which is book copying.

¹² Arif Lutviansori, 2010, *Hak Cipta dan Perlindungan Folklor di Indonesia*, Yogyakarta : Graha Ilmu, Hal. 78.

¹³ Ni Ketut Supasti Dharmawan, *Relevansi Hak Kekayaan Intelektual Dengan Hak Asasi Manusia Generasi Kedua*, Jurnal Dinamika Hukum, Vol. 14 No. 3, (2014), Hal. 525

¹⁴ *Ibid*

¹⁵ Widyopramono, 1992, *Tindak Pidana Hak Cipta Analisis Dan Penyelesaiannya*, Jakarta : Sinar Grafika, Hal. 19.

In other words, the factors causing the occurrence of copyright crimes are because the opportunities are many and provide no small benefits, and because the monitoring and monitoring system for copyright crimes is still weak. Efforts to prevent and take action against the perpetrators of piracy have not been able to prevent the hijackers from becoming a deterrent.¹⁶

Copyright infringement which causes the creator to suffer material loss, among the factors causing one another the problem is quite complex and correlates with one another, both within the individual actor himself and those originating from outside the individual actor. According to a sociologist named Chambliss, a person committing a violation is basically caused by 2 (two) forms of behavioral deviation, which are interrelated and influence one another, namely:¹⁷

1. Expressive behavior is carried out because it is a pleasure in itself for the perpetrator and is not carried out to achieve other goals,
2. Instrumental behavior that aims to achieve certain purposes outside the act itself.

Before taking legal steps, both criminally and civilly, Gramedia Digital will also take some firm steps for users who violate the application, one of which is duplicating E-Books. One of the characteristics of someone who carries out suspicious activities, especially duplicating E-Books, is that they will take a screenshot or screenshot, with the screenshot it can be indicated that the user is stealing data or

writing information that has been published in the form of an E-Book. Gramedia Digital stated that they have the right to suspend the user's account for a certain time if the user abuses the content by taking screenshots of the Gramedia Digital content. If a user who violates the Copyright provisions is detected and has taken action in the form of 5 (five) screenshots based on the system or technology owned by Gramedia Digital, Gramedia Digital has the right to suspend the account for a period of 30 (thirty) days (soft block). And if Gramedia Digital has done a soft block on the account 2 (two) times and it is confirmed that the user has been proven to have misused the content, then Gramedia Digital has the right to suspend the account for 30 (thirty) days for the third time and Gramedia Digital does not will receive a request for reactivation of the account (hard block).

Prior to the writing of the agreement, Gramedia Digital has emphasized that it requires any user to agree to comply with all provisions of local law, provincial law, national law, statutes, provisions, and regulations that apply to the use of services by users. All transactions on the service are also governed by Indonesian law, without including the provisions governing legal disputes. User use of the service may also be subject to other laws. Gramedia Digital has the right to take steps that Gramedia Digital believes are reasonably necessary or appropriate to enforce and/or check compliance with any provisions of the written agreement. Gramedia Digital also has the right to disclose any registration data and/or account information to law enforcement officials, government officials and/or third parties, as Gramedia Digital deems reasonably necessary or appropriate to implement and/or check compliance with any provisions of the agreement. has been

¹⁶ *Ibid*

¹⁷ Soerjono Soekanto, 1994, *Efektivitas Hukum dan Peranan Sanksi*, Bandung : Remaja Karya, Hal. 68.

written as such which is not limited to Gramedia Digital's right to cooperate with any legal process in connection with the use of services and/or products by users, and/or a third party claim that the use of services and/or content by users is against the law and/or violate the rights of the third party.

According to the Copyright Law, any person who is proven to have violated copyright protection is subject to sanctions. The criminal provisions and sanctions against the act of copying books without permission based on Article 112 of Law Number 28 of 2014, are as follows:¹⁸

1. That anyone who unlawfully commits the acts as referred to in Article 7 paragraph (3) and/or Article 52 for commercial use, shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).
2. In article 113 paragraph (3) that any person who without rights and/or without permission of the creator or copyright holder violates the economic rights of the creator as referred to in article 9 paragraph (1) letter a, letter b, and letter e, and/or letter g for commercial use shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Without the permission of the creator or copyright holder for commercial use, in the case of:
 - a. Creation publishing.

¹⁸ Lihat Pasal 112 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.

- b. Reproduction of creation in all its forms.
- c. Distribution of the work or copies thereof, and
- d. Announcement of creation.¹⁹

3. And in paragraph (4) it is stated that, any person who fulfills the elements as referred to in paragraph (3) committed in the form of piracy, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp.4,000,000,000.00 (four billion rupiah).

Then in Article 117 of the criminal provisions of Law Number 28 of 2014 as follows:²⁰

1. Everyone who intentionally and without rights violates economic rights as referred to in Article 24 paragraph (2) letter c for commercial use shall be punished with imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 100,000. .000,00 (one hundred million rupiah).
2. Everyone who intentionally and without rights violates the economic rights as referred to in Article 24 paragraph (2) letter a, letter b, and/or letter d for commercial use shall be punished with imprisonment for a maximum of 4 (four) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).
3. Everyone who fulfills the elements as referred to in paragraph (2)

¹⁹ Lis Sutinah, 2015, *Panduan Resmi Hak Cipta*, Jakarta : Visimedia, Hal. 67.

²⁰ Lihat Pasal 117 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta.

committed in the form of piracy shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp.4,000,000,000.00 (four billion rupiah).

Then for the settlement of disputes in the Copyright field, it is regulated in CHAPTER XIV concerning Dispute Settlement, Article 95 Paragraph (1) of Law Number 28 of 2014 states that: "Settlement of copyright disputes can be done through alternative dispute resolution, arbitration, or courts". Based on Article 95 Paragraph (1) of Law Number 28 of 2014, that efforts to resolve copyright disputes

can be carried out through alternative dispute resolution and arbitration before going to court. The court authorized to adjudicate copyright infringement disputes is the Commercial Court (Article 95 Paragraph (2) of the Copyright Law) in the case of filing a lawsuit. As in Law Number 48 of 2009 concerning Judicial Powers, the Commercial Court is a special court within the general judiciary. Criminal charges against copyright infringement which have the authority to adjudicate are the District Courts.²¹

The dispute resolution mechanism through Arbitration in Article 34 of the Law on Arbitration and Alternative Dispute Resolution may use a National or International Arbitration Institution based on the agreement of the parties, and the mechanism follows the chosen institution unless the parties determine it themselves.²²The stages in the

implementation of Arbitration based on the Provisions of Laws and Regulations Number 30 of 1999 are: Application for Arbitration, Appointment of an arbitrator, submission of a claim letter by the applicant, response from the respondent, summons to both parties, evidence, reading of the decision. On December 3, 1977, two years before the enactment of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, on the initiative of Prof. R. Subekti, S.H., Harjono Tjitrosubono, S.H. and A.J. Abubakar, S.H., established the Indonesian National Arbitration Board (BANI) as an institution to resolve commercial disputes that are

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autonomous and independent. Where

BANI can stand alone without being contested by other powers. Thus, BANI is expected to be able to carry out its duties objectively, fairly, and honestly in deciding cases.²⁴ There is no mechanism from BANI that deviates from Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Then in Law Number 28 of 2014 concerning Copyright, the authority of the Commercial Court in resolving copyright disputes can be seen in Chapter XIV and Chapter XV of Article 95

Article 95 stipulates:

1. Copyright dispute resolution can be done through alternative dispute resolution, arbitration, or court.
2. The competent court as referred to in paragraph (1) is the Commercial

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²¹ Ni Ketut Supasti Dharmawan, et. al, 2018, *Harmonisasi Hukum Kekayaan Intelektual Indonesia*, Denpasar : Swasta Nulus, Hal. 36.

²² Susanti Adi Nugroho, 2015, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta : Prenadamedia Group, Hal.

²³ Gatot Soemartono, 2006, *Arbitrase dan Mediasi di Indonesia*, Jakarta : PT Gramedia Pustaka Utama, Hal. 97.

²⁴ Frans Hendra Winarta, 2012, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika : Jakarta, Hal. 96.

Court.

3. Other courts other than the Commercial Court as referred to in paragraph (2) are not authorized to settle Copyright disputes.
4. In addition to infringement of Copyright and/or Related Rights in the form of piracy, as long as the parties to the dispute are known to exist and/or are in the territory of the Unitary State of the Republic of Indonesia, they must first resolve the dispute through mediation before making criminal charges.

E-Book copyright dispute resolution other than being able to be done through the paths already mentioned and described above can also be resolved by Mediation, Mediation is a way of resolving disputes through a negotiation process that involves a third party who is neutral and does not take sides with the disputing parties and is accepted. Presence of the parties to the dispute.²⁵ The integration of mediation into dispute resolution in court is regulated in Perma Number 1 of 2016. The basis for the integration of mediation is seen from the provisions of Article 130 HIR and Article 154 Rbg that in fact judges must try to reconcile the two parties to the dispute, and mediation is considered the most effective solution. effective. In the provisions of Article 4 Paragraph (2) Letter a Number 1 Perma Number 1 of 2016 there are exceptions to disputes that are required to be resolved through mediation, namely disputes that are examined and decided by the Commercial Court. Observing Article

²⁵ Jumadiyah, "Proses Perceraian Melalui Mediasi di Mahkamah Syar'iyah Lhokseumawe", Jurnal Ilmu Hukum Universitas Malikussaleh, Aceh, Vol. 6, No. 2, (2012), Hal. 3.

95 Paragraph (2) of the Copyright Law, that the court authorized to settle Copyright disputes is the Commercial Court. Thus, mediation efforts in the settlement of copyright civil disputes are not mediation in court but through voluntary mediation efforts as stated in Article 4 Paragraph (4) of Perma Number 1 of 2016 that based on the agreement of the parties, disputes that are excluded from the obligation of Mediation can still be resolved through Voluntary mediation at the stage of case examination and at the level of legal remedies.

3. Conclusion

The development of E-Books in the modern era is currently growing rapidly because of the ease of access, besides that there are also weaknesses of E-Books that are easily duplicated, Gramedia Digital provides legal protection to E-Book creators in the form of an internet security system, namely Cookie and Web Beacon technology that can record and mark traces of user activities which will later be stored as digital track records for the purpose of legal protection for creators of E-Book works.

The legal consequences of the perpetrators of duplicating E-Books are those in the digital gramedia application, namely soft blocks in the form of account suspension for 30 days and hard blocks in the form of permanently deactivating accounts. Gramedia digital only explains that they cooperate with any legal process (local law, provincial law and national law). Then in Article 113 Paragraph (4) of the Copyright Law Number 28 of 2014 the perpetrators of duplicating E-Books are subject to a maximum imprisonment of 10 years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah). Settlement of e-book copyright duplication disputes is carried out through litigation or commercial courts and non-litigation by arbitration or alternative dispute resolution.

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