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Jurisdiction in Digital Copyright Lawsuit

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ABSTRACT. The copyright is one of form in intellectual property rights. It comprises of work being protected in multiple forms. With the advancement of modern world, the copyright have move it protection, from mere reproduction right for work in book, as an authorship, to the modern form in the digital world. The move into the digital form of work in copyright have open the possibilities of more effective distribution or right including its distribution. The easiness of the distribution in digital format, made it hasle free, and work of copyright may be enjoyable in multiple location at once. This then lead to the dispute resolution that is currently available for the copyright cases in civil lawsuit. The available avenue for copyright dispute is heavily rest on the commercial court that have been designated court that have the absolute jurisdiction in civil litigation of the copyright. Nature of the digital copyright have made it solution to the dispute resolution to bel clear and concise. Through this research, by employing doctrinal method, solution for the avenue jurisdiction over dispute in copyright will be clear.

KEYWORDS: dispute resolution, effective court, simultaneous litigation

INTRODUCTION

Copyright is a legal concept of an exclusive right given to the author of the work. This right is handed by the state for the work that the author have created. To be eligible to qualify as work, the work that is protected, can not be merely an idea but more to it, the work have to be fixated in material form or express in such way that other can enjoy it. For that reason, in Indonesia the copyright become an exclusive right can be seen as an automatic right once the work is have been transform from an idea to fixate, although there are limitation to the almost automatic birth of the copyright. The term for automatic the country choose have negate the need for the author to register the work to have the right to be exist and protected. The critical understanding for this definition, is the work must be fixated to be able to have protection. Generally intellectual property rights are divided into two categories, with one categories are industrial rights, which contain among other patent, trademark, trade secret, and the other categories are copyright. Within copyright the work being protected have separate categories on its own, but copyright usually involve art, literature and science (Soelistyo, 2011) (Nainggolan et al., 2022) (Sihite et al., 2024).

Copyright roots can be traced back to into several civilization, some can be trace back into Greek and Rome civilization. The use of copyright came about after it is used for the first time by Jules Renouard in the *Traitt Des Droits D'auteur Dans La*

Littrature, Les Sciences Et Les Beaux Arts, published in 1838. The term he coined is to replaced literary and artistic property or intellectual property, where during those period is the accepted legal definition for the protecting this right.

Indonesia is part of the global community, Indonesia have signed international convention, of one which regarding the copyright. As the international convention where Indonesia become member, then Indonesia have the obligation to comply with the agree convention, one of such agreement is The Trade Related Aspects of Intellectual Property Rights (Dwirainaningsih et al., 2025) (Aniskha & Prahara, 2021). Thus accommodating the national need of the Indonesia to protect the copyright and to conform with the international obligation where Indonesia have agree to it, can be seen in the recent edition of copyright law is Law Number 28 of 2014. This law is the premier law that provide the major point on the protection of copyright.

With the numerous type of work being protected by the copyright, it also have taken into account of convention regarding copyright, among other WIPO Copyright Treaty, that acknowledge the emergence of the digital advancement, as can be seen in the convention that set the protection for computer programs, technological measures, and right management information. This type of digital work as the original of copyright is the recent development of work in copyright. The emergence of digital products, for the perspective of Indonesia have begun is including the separates types of work, where before it was deemed that only exist in the computer programs. These new categories are at least three types: video games, computer programs, and map.

The birth of the interconnection of the computer can be traced in University of Indonesia, where it began to operate in 1988, as operational of the computer laboratory under the name of Universitas Indonesia Network Laboratories (UI-NETLAB) with its IP address 192.41.206/24. Namely with the birth of this digital address or IP address have usher Indonesia to the world wide web. As the world wide web is developing is not until 1994 Indonesia begin to have its first commercial internet service provider under the name of IndoNet. The service they offer is using dial up internet (Gani, 2020).

With the competition among internet service providers in delivering speed-sensitive services, such as the streaming processes of YouTube. The server's location connected to the user will differ based on the user's geographical position. YouTube utilizes Google's data servers to offer its services. Utilizing Google's server network, YouTube provides users with seamless and rapid performance. The utilization of several servers for efficient and rapid traffic indicates that YouTube is caching content from various sites on its servers to facilitate data retrieval from the nearest server. The digital copyright will allow the work to be accessed in several locations; hence, when the author initiates a lawsuit, the case may be adjudicated in different jurisdictions, either domestically or including foreign jurisdictions. With that it

become necessity to establish to proper jurisdiction regarding matter of civil lawsuit over copyright to better protect the exclusive right of copyright given by the state.

RESEARCH METHOD

Methodology on research is the foundation of which the research should follow in analyzing the problem it try to solve. Putman and Albright have on the definition of legal research is the process of locating the law that applies to the question raised by the facts of the case. Legal research and analysis are inter-related, and performing legal research usually involves the use of analysis principles. The object of legal analysis and legal research are to analyze the factual event presented by the client and determine: what is the legal issue (question) or issues raised by the factual event; 1) What law govern the legal issue; 2) How the law that governs the legal issue applies to the factual event, including what, if any legal remedy is available (Putnam & Albright, 2018). As doctrinal research where it provide methodology for systematic approach toward the problems at hand, with systematic steps of determining governing rule, then analyzing the relation between governing rule, it then can highlight the difficulties on the research and if able, it then can be used to make scientific guess of the possibilities in the future (Marzuki, 2011). Accordingly, this study employs a doctrinal approach by relying on primary legal materials, such as statutory regulations, judicial decisions, and comparative legal sources. The comparative method used is micro-comparative in nature, focusing specifically on the legal issues under examination. This approach is further supported by contemporary methodological perspectives, which underline the importance of systematic, comprehensive, and analytical frameworks in legal research, particularly within qualitative paradigms (Ahmad, A, Fachrurrazy, M, et al, 2024) (Degdo Suprayitno, 2024).

RESULT AND DISCUSSION

As Indonesia have attributed the protection of copyright is based on declaration, and materialization of the work. This comes with bases for protection for copyright in Indonesia, is in Article 2 Act Number 28 year 2014 on Copyright (Copyright act), they are work Indonesian national or entity, work where their first Publication in Indonesia, and work that belong to the national of other country that is in direct cooperation with Indonesia in protection of copyright or where the country is the a member of multilateral agreement where Indonesia is a member of that agreement. With this Indonesia court have establish the basis of their jurisdiction toward the protection of copyright.

The impact of international agreements is also evident in other nations, where the enforcement of intellectual property rights as part of trade agreements has resulted in sanctions against nations that have failed to control these provisions in their domestic laws. The requirement established by TRIPs mandates a uniform minimum standard for the protection of intellectual property among participating countries (Yu, 2001).

With the passing of the critique by the public that the court have not been able to deliver decision that is consistent, and critique that the court have not been able to carried out the process of justice in independent manner (Brotosusilo, 2003), these among others reason have catapult Indonesia to introduced the absolute jurisdiction of the copyright cases to the commercial court. This introduction of the commercial court can is firstly introduce on Law Number 19 of 2002 on Copyright, where the law have uprooted the jurisdiction of general court regarding copyright civil cases. This new direction can be understandable because the aim of the new arrangement of court is to be made for more consistent decision, with the effective and specialist type of court. Currently there are 5 commercial court that is available to try the copyright cases in Indonesia. These 5 courts are seated in Medan, Jakarta, Semarang, Surabaya and Makassar.

As the Copyright Law have enacted the procedural law that is specifically design for the copyright cases, but this regulation still lacking on the determining the relative jurisdiction considering of the commercial court. The civil procedural law, that being apply to the civil cases, mainly follow the doctrine of *actor sequitur forum rei* and *forum rei sitae*. The principle of *actor sequitur forum rei* have given the relative jurisdiction over the lawsuit on the home court of the defendant. This principle then force the plaintiff to file the lawsuit in the home court of the defendant. While the *forum rei sitae* will be enforce where the nature of the relative jurisdiction of the court will be decide by the nature of the immovable goods being disputed in the case. This principle can be seen in the civil procedural law, that is enforce, where currently there are separate law, one for the Java and Madura island, while the other law are for territory outside of Java and Madura.

With the multitude of possibilities, with regard to the review procedure in civil matter, it is available toward the chance of where there are two or more decision being deliver over same subject that is contradict to each other. This is one the reason to submit the review procedure, where as there exist conflicting decision of the same level or arises from different type of court, that is conflicting to each other, as it stated in Article 67 e of the Act Number 14 Year 1985 on Supreme Court as it was revised by Act 5 Year 2004 and second revision by Act Number 3 Year 2009. It was then further clarify through Supreme Court Circulation Letter 10 Year 2009 then with Supreme Court Circulation Letter 7 Year 2014, as it been stated, the possibilities of submitting review more than once.

As the Supreme Court Act only provide on the reason for applying review procedure is decision that is contradict with each other, the act is silent regarding how many review that is available for the parties to initiated. The Supreme Court Circulation Letter 10 Year 2009 then with Supreme Court Circulation Letter 7 Year 2014 have made it available for the review procedure to be taken for more than one time on very limited ground, which is the contradiction of decision. This then have shed the blind spot that exist the procedural law of the civil litigation, and open to the possibilities to bring justice over the matter.

The copyright law, as it is, where we have discuss, have set the procedural rule over the copyright cases. It have set the procedure of cassation to the Supreme Court, where the court of first instance have not yet being accepted by the parties. This cassation procedure are formalized as part of the procedure that is available, but the Copyright Act does not have provision regarding the review procedure. Face with this situation, as the Supreme Court Act have become for the review procedure for other type of cases, which include the civil

cases where copyright case is part of that, therefore for the review procedure, the copyright cases will hinge on the Supreme Court Act, along with ground of contradicting decision.

With the multitude of possibilities of cases can be brought into the defendant, thus have open the possibilities of a case becoming parallel with another. When facing with the situation, then court must decide of situation by regarding factor of :

1. First filed case
2. In rem case
3. Declaratory action
4. Degree similarity
5. Discretion standard
6. Comity (George, 1999).

It is worth to note, the scheme over the peer to peer system in the digital world have enable alleviation of the central nerve system. As the system in MP3 cases, to more advance in the torrent system, where rather providing the whole work in one donor computer, it then provide over the part of the copyright work being asked by the receiver, where the provider will catalogues the donor, this then provide the decentralized systems that will bring potential infringement. But the activity of such decentralized system is not being borne equally by the computer in the system, where majority of the computer in the system does not act as the donor of the work being asked (Adar & Huberman, 2000). This is highlight the complexity against jurisdiction based on multiple form of conduct that they themselves is not even aware be part of the bigger picture that is against the right of copyright.

In the case of establishing jurisdiction of Indonesia commercial court over the matter it can be trace that the relevance of the point conflict intersects with the corresponding party in Indonesia. The case of PT Aquarius Pustaka Musik v Bigo Technology Pte. Ltd highlight the approach the judiciary over this matter. With the plaintiff have made statement that the right of the right holder over work of copyright have been used without any authorization from the right holder by foreign entity. Plaintiff is an Indonesia entity and the defendant in a foreign entity. In this case the Supreme Court in Decision Number 854 K/Pdt.Sus-HKI/2023 has view that the construction of the case being put forward in the case is about the right of the plaintiff being use by the defendant without authorization by the plaintiff. The court have put the legal argument that the Copyright Law have only said the jurisdiction over the copyright civil lawsuit rest on the commercial court without further address which of the commercial court have the jurisdiction, and the Copyright Law is in effect the work that is derive from Indonesia or foreign, therefore the jurisdiction of commercial court in Indonesia can be exercise to the foreign entity, without specific to be specific jurisdiction of which commercial court.

Another approach by the court it was put forward by the court over case in the case regarding foreign entity. In this case between Nokia Technologies Oy v PT. Selalu Bahagia Bersama, where the foreign entity have put forward of intellectual case in commercial case over the use their intellectual properties. The plaintiff put the case against local manufacturer that work on behalf of the foreign company. As the order to produce the product that plaintiff said was used without any authorization, thus made the plaintiff that produce it in Indonesia are illegal use if intellectual property. The court view through Case Number 1849 K/Pdt.Sus-HKI/2022, that the defendant was merely working on behalf of

other parties, which are foreign entity, thus without involving the main party that order the work have made the case is without any principal parties, making it incomplete case.

China Approach

One of the approaches that China have establish in by presenting double prong approach, regarding the enforcement of the work of copyright. This double prong approach is seems aimed to be better serve the interest, not only to the author, but the general population, that include the society and the state. This point o.f view can be seen through the development of the law, where the prescribe enforcement have change it's stance regarding this level of protection. This development can be seen in the enforcement view of an infringement in the 2010 Copyright Law, where it prescribe "anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the bad effects of the act, making an apology, or paying compensation for damages; where the public interest is impaired the National Copyright Administration (NCA) may order the cessation of such infringement.

This then move to the 2020 amendment of Copyright law that prescribe to the public interest being harmed as the basis for the action being carried by the NCA. As the law does not give clear definition, NCA then have the authority in making determination of regarding such harm to the public interest. This then give rises to the need to be better prescribing the public interest are as the basis of the action, where clearer definition will benefited both the public interest through the NCA and the need of the copyright holder (Xie, 2022).

In bearing there are multiple possibilities of overlapping jurisdiction, China Procedural Law in article 280 have stated , where case may be consider as parallel litigation. These criteria are: (i) the same parties, (ii) the same disputes, and (iii) one party filing litigation in a foreign court and the other party filing litigation in a Chinese court, or one party filing litigation in both a foreign and a Chinese court. in the case of *Conversant Wireless Licensing S. hr. 1. v. Zhongxing Telecommunication Equipment Corporation*, Supreme People's Court have laid down the principle where it lack the domicile of the paries in China, it then needed for the cases to have connection to China for the Chona court to have jurisdiction over the cases. Then in 2022 the criteria of the connection become much clearer over the case of *Guang Dong Oppo Mobile Telecommunications Corp., Ltd., et al. v. Sharp Corporation., et al*, of patent cases. This case ruled by the Supreme People's Court have given the based of the connection by the place of the execution of the order.

To clear the approach of the court the Supreme Court in 2002 then amended in 2020 have issue their interpretation regarding case of copyright, where it guide the court in establishing jurisdiction over case (as seen in <https://www.wipo.int/wipolex/en/legislation/details/22152>, retrieved at 24 March 2026). In the event there are question over jurisdiction of the case, court should have look at the:

1. Location where the act being committed.
2. Location of where the work being accessed.

With this interpretation, court in China have open their jurisdiction to method of copyright lawsuit. As it has discussed above the method of using internet as means of distributing work of copyright, made it the location of the actual act is possibly not in the same location. The location where work being accessed have made the possibility if work of copyright being able to be accessed in China. Where the jurisdiction over where the act being committed, have

acknowledge that the modern digital world have made available data to transfer in multiple point of server or computer, this then widen jurisdiction of the court to where the possibility of any of the transfer of data is made available even as the temporary transfer point.

CONCLUSION

Jurisdiction establish in commercial court is readily available in provide protection of copyright. Although the copyright does not need the registration in order for protection of the work, when sometimes it even be called automatic protection. With the establish base for the protection of copyright seems very wide, of it cover the work where the author is national of Indonesia or for foreign author that have made available the work for the first time in Indonesia or for foreign national that have either the country have direct cooperation with Indonesia or the same member with multilateral cooperation. This definition have cover wide bases for protection by the Indonesia court to work in copyright.

To be able to establish the jurisdiction over the digital copyright, Copyright Law have provide the basis, but as the court practices there several point of the law have been silent and be filled with the interpretation of the court. This interpretation of the court sometimes bee case specific, but at wider range court interpretation have definitive valued that is carried over on another case. This is especially important, where the current mode in digital copyright is not specific in one place but it have carried over into several jurisdiction. The court need to be careful in establishing their jurisdiction in one hand to protect copyright but on the other hand not to abuse the jurisdiction that is never there to begin with.

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