



Principles of Responsibility of Actors of Unlawful Activities Economic Rights in Copyright

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Abstract

God bestows spirit and reason to humans to be able to think, create, discover new things and perfect them to meet human needs both as individuals and as groups of society, which in turn gives birth to intellectual property. According to Nolo, Stim, Richard *Intellectual property* refers to the product of human intellect which has commercial value and is specifically protected by law. *Intellectual property* includes creative works, a wide variety of products, processes, images, inventions and services that are protected by patent, copyright, trademark or trade secret laws. The principle of Responsibility for Actions against the Law. Moral rights are the principle of responsibility with deliberate mistakes. The Principle of Responsibility for Unlawful Actions regarding the Cancellation of Copyright is the principle of responsibility. The Principle of Responsibility for Unlawful Acts regarding Abolition is the principle of absolute responsibility.

Keywords: *Absolute Liability; Tort; Economy Rights*

Introduction

God created man in the best form, this is stated in the Qurán Surah Attiin verse (4): “*Laqad khalaqnal insaana fii ahsani taqwiim*, meaning: Indeed. We have created humans in the best form” and bestow the spirit and reason to human. In the Alquran Surah Al Isra verse (84) it’s stated: “and they ask you (Muhammad) about the spirit, say that it’s part of my Lord’s business, while you are given only a little knowledge.”¹ According to Muhammad Ilham Shaleh “Intellect is *nur alqalb* (light of the heart) and *nur alqalb* (light of the heart) is *nur al nafs* (light of the soul) and *nur al nafs* (light of the soul) is *nur arruh* (light of the spirit)”².

¹ Sofa Mudana, ‘Nilai-Nilai Pendidikan Akhlak Dalam Surat Al-Israa’’, *At-Tazakki: Jurnal Kajian Ilmu Pendidikan Islam Dan Humaniora*, 2017.

² Muhammad Ilham Shaleh, ‘الخصائص الفنية في أشعار حسان بن ثابت’, *Jurnal Adabiyah*, 2016
<<https://doi.org/10.24252/jad.v17i116i1a8>>.

God bestows spirit and reason to humans to be able to think, create, discover new things and perfect them to meet human needs both as individuals and as groups of society, which in turn gives birth to intellectual property.³ According to Nolo, Stim, Richard *Intellectual property* refers to the product of human intellect which has commercial value and is specifically protected by law. *Intellectual property* includes creative works, a wide variety of products, processes, images, inventions and services that are protected by patent, copyright, trademark or trade secret laws.⁴

Liability or liability for compensation is also regulated in Article 1365 of the Civil Code, namely the responsibility of the perpetrator of an illegal act to compensate the victim, in this case it's also called liability or compensation responsibility.⁵

In the sense that acts against the law regulated outside Article 1365 of the Civil Code also recognize what is referred to as liability without error or what is often referred to as 'absolute responsibility' or direct responsibility.⁶ The legal substance in Law Number 28 of 2014 concerning Copyright states that acts against the law are stated in the explanation of Article 95 paragraph (1), however this doesn't explain the form of acts against the law in Law Number 28 of 2014 concerning Copyright.⁷ Likewise, the form of responsibility unlawful acts in Law Number 28 of 2014 concerning Copyright is not formally and explicitly explained so that it requires substantive material legal analysis in relation to legal principles regarding the principle of responsibility for illegal acts. In this case, it's very necessary to know the principle of actions against Copyright law, both those that require errors and those that do not require errors, called responsibility without error or absolute responsibility or direct responsibility and liability for compensation or liability and the principle of substitute responsibility, namely someone. Must be responsible for the actions of others.⁸ Therefore it's very important to know the principle of responsibility for perpetrators of illegal acts including acts against the law of economic rights, acts against the law of morals rights, acts against the law regarding annulment and acts against the law regarding abolition.

Research Method

The author uses the normative juridical method, which is a method that is focused on examining the applications, rules or norms of positive law.⁹

Discussion

The principle of responsibility for perpetrators of illegal acts is not regulated in Law Number 28 of 2014 concerning Copyright, in this case there is a legal problem in the form of a legal norm, therefore it's necessary to have an interpretation method as a legal discovery, in order to obtain an understanding of

³ M. Roesli, Sarbini Sarbini, and Bastianto Nugroho, 'Kedudukan Perjanjian Baku Dalam Kaitannya Dengan Asas Kebebasan Berkontrak', *DiH: Jurnal Ilmu Hukum*, 15.1 (2019), 1 <<https://doi.org/10.30996/dih.v15i1.2260>>.

⁴ William T. Gallagher, *Intellectual Property, Intellectual Property*, 2017 <<https://doi.org/10.4324/9781315252148>>.

⁵ Randolph P. Beatty and Ivo Welch, 'Issuer Expenses and Legal Liability in Initial Public Offerings', *Journal of Law and Economics*, 1996 <<https://doi.org/10.1086/467359>>.

⁶ Jeremy Waldron, 'Stare Decisis and the Rule of Law: A Layered Approach', *Michigan Law Review*, 2012 <<https://doi.org/10.2139/ssrn.1978594>>.

⁷ BP LAWYERS, 'HAK CIPTA : MENGENAL LEBIH DALAM HAK CIPTA DI INDONESIA', *BP LAWYERS*, 2018.

⁸ Geoffrey P. Hull, 'Copyright Law', in *Encyclopedia of International Media and Communications*, 2003 <<https://doi.org/10.1016/B0-12-387670-2/00051-0>>.

⁹ Tomy Michael, 'Humanity in the Enforcement of Anti-Corruption Laws', *Jurnal Hukum Bisnis Bonum Commune*, 2.2(2019), 211.

the principle of responsibility. Perpetrators of illegal acts to fill the void of legal norms.¹⁰ The ways to fill in the legal vacuum are as follows:

1. Broad interpretation of the law;
2. Legal establishment;
3. Invention of law.

It has been argued that these laws and regulations are neither clear nor complete. Therefore, the law must be found by explaining, interpreting or completing the statutory regulations. To find the law, there are several methods of legal discovery.¹¹ It has long been known that the teaching of interpretation or the discovery of this law is called juridical hermeneutics¹² or the juridical method. The method of interpretation from the beginning is divided into grammatical, systematic, historical and teleological interpretation. Besides that, there are comparative and anticipatory interpretations.

Principle of Responsibility for Actions against the Law of Economics Rights

Article 8 of Law Number 28 of 2014 concerning Copyright states that Economic Rights are the exclusive rights of Creators or Copyright Holders to obtain economic benefits for works. According to Sudikno M. that economic rights are the right to obtain economic benefits for works and related products. This economic right in each Copyright Law is always different, both in terms of terminology and the types of rights it covers, and the scope of each type of economic right.¹³

Acts against the Law on Economic Rights are regulated in Article 96 of Law Number 28 of 2014 concerning Copyright as follows:

Article 96:

- (1) Creators, Copyright Holders and / or Related Rights Holders or their heirs who suffer a loss of economic rights are entitled to compensation.
- (2) Compensation as referred to in paragraph (1) shall be provided and included at once in the court's ruling on Copyright and / or Related Rights criminal cases.
- (3) Compensation payments to creators, copyright holders and /or related rights holders will be paid no later than 6(six) months after the court's decision is legally binding.

Based on the provisions of Article 96 of Law Number 28 Year 2014 concerning Copyright, there is no provision for an economic compensation suit requiring errors. The aforementioned provisions also don't regulate illegal acts regarding a person's actions but other people who must be responsible for these acts. Thus the principle of responsibility for actions against the law of economic rights is responsibility without error or absolute responsibility or direct responsibility. Actions against the law regarding Economic Rights in Law Number 28 of 2014 concerning Copyright require four elements:

¹⁰ Erica Von Essen and others, 'Deconstructing the Poaching Phenomenon', *British Journal of Criminology*, 2014 <<https://doi.org/10.1093/bjc/azu022>>.

¹¹ Afif Khalid, 'Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia', *Al' Adl*, 2014.

¹² Tomy Michael, 'Right to Have Rights', *Mimbar Keadilan*, 2017, 106 <<https://doi.org/10.30996/mk.v0i0.2203>>.

¹³ Jimly Asshiddiqie, 'Gagasan Negara Hukum Indonesia', *L'école de Palo Alto*, 2006 <<https://doi.org/10.14375/np.9782725625973>>.

1. There is an act;
2. Is against the law;
3. There are disadvantages;
4. There is a causal relationship (cause and effect) between actions and losses.

Therefore, acts against the law of economic rights are one form of illegal action in Law Number 28 of 2014 concerning Copyright which doesn't require errors or is also called an act against the law with absolute responsibility or direct responsibility. In addition, acts against the law of economic rights which clearly regulate the compensation experienced by the Creator, Copyright Holder or their heirs in relation to the theory of liability or liability for compensation, the act against the law of economic right is adhering to the principle of accountability or liability for compensation.

Principle of Responsibility for Unlawful Actions Regarding Moral Rights

Article 5 of Law Number 28 of 2014 concerning Copyright states that moral rights are rights that are eternally inherent in an Author to keep or remain anonymous, use his or pseudonym, change his work in accordance with society's appropriateness, change the title and the sub-title of work, and defend it's right in the event of distortion of work, mutilation of work, modification of work, or things that are detrimental to one's own honor or reputation.¹⁴

The concept of moral rights comes from the continental legal system, namely France. According to the concept of continental law, the author's rights are divided into economic rights to obtain economic benefits such as money, and moral rights which involve the protection of the creator's reputation. Intellectual property rights can be transferred to other parties, but moral rights remain inseparable from the creator, are special rights that are eternal in nature to the creator of his creation. This moral rights have 3 (three) principles, namely the right to announce, the right of paternity and the right to integrity.

The legal basis for acts against the law regarding Moral Rights is regulated in Article 98 paragraph (1) of Law Number 28 of 2014 concerning Copyright as follows: Article 98 paragraph (1): Transfer of Copyright over all Works to another party doesn't reduce the rights of the Creator or his heirs to sue who any person, deliberately and without rights and without the consent of the Author, violates the moral rights of the Creator as referred to in Article 5 paragraph (1).

Based on Article 98 paragraph (1) of Law Number 28 of 2014 concerning Copyright, actions against the law of Moral Rights contain the following elements:

1. There is an act;
2. Is against the law;
3. Done by mistake in the form of intent.

Therefore, according to the author, Moral Rights are one of the actions against the law in Law Number 28 of 2014 concerning Copyright with the principle of responsibility for perpetrators of illegal acts is the principle of responsibility with deliberate errors.

¹⁴ B. Andersen, 'Intellectual Property Rights', in *Encyclopedia of Applied Ethics*, 2012 <<https://doi.org/10.1016/B978-0-12-373932-2.00099-5>>.

Principles of Responsibility for Unlawful Actions regarding Copyright Cancellation

This is regulated in Article 97 of Law Number 28 of 2014 concerning Copyright as follows:
Article 97:

- (1) In the event that a work has been recorded in accordance with the provisions of Article 69 paragraph (1), other interested parties may file a lawsuit for cancellation of the registration of the work in the general list of works through the Commercial Court;

Based on the provisions for deletion as regulated in Article 97 paragraph (1) of Law Number 28 of 2014 concerning Copyright, acts against Copyright law regarding deletion contain elements:

1. There is an act;
2. Is against the law.

Therefore, according to the author that based on Article 97 paragraph (1) of Law Number 28 of 2014 concerning Copyright, acts against the law regarding cancellation through legal discovery are one of the actions against the law in Law Number 28 of 2014 concerning Copyright with the principle responsibility without fault or direct responsibility or absolute responsibility.

Principles of Responsibility for Unlawful Acts regarding Abolition

A claim for deletion of a Copyright in the General Register of Works can be made, in this case the legal power of recording the Works and Related Rights products is deleted due to a request for a person or legal entity whose name is registered as an Author, Copyright Holder, or Related Rights owner, the expiration of economic rights, the decision Courts that have obtained permanent legal force regarding the cancellation of records of Works or Related Rights products, or violating religious norms, moral norms, public order, state defense and security, or statutory regulations the removal of which is carried out by the minister.¹⁵ The delisting of registration of a work at the request of a person or legal entity whose name is registered as an Author, Copyright Holder, or Related Rights owner is subject to fees.¹⁶

The legal basis regarding the reasons for deletion of Copyright in the general list of Works is regulated in Article 74 of Law Number 28 of 2014 concerning Copyright as follows:

- (1) The legal power of recording Works and Related Rights products is deleted because:
 - a. Requests for persons or legal entities whose names are registered as Creators, Copyright Holders, or Related Rights owners;
 - b. Elapsed time as referred to in Article 58, Article 59, Article 60 paragraph (2), and paragraph (3), and Article 61;
 - c. Court decisions that have obtained permanent legal force regarding the cancellation of registration of Works or Related Rights products;

¹⁵ Gabriël Moens and John Trone, *Commercial Law of the European Union, Commercial Law of the European Union*, 2010 <<https://doi.org/10.1007/978-90-481-8774-4>>.

¹⁶ Yohanes Turyandoko, 'PENEGAKKAN HAK CIPTA DARI TINDAKAN PEMBAJAKAN DI INDONESIA', *Lex Crimen*, 2013.

- d. Violating religious norms, moral norms, public order, state defense and security, or statutory regulations the abolition of which is carried out by the minister.
- (2) Deleting the registration of a work at the request of a person or legal entity whose name is registered as an Author, Copyright Holder, or Related Rights owner in paragraph (1) as referred to in paragraph (1) letter a, is subject to a fee.

Therefore according to the author that acts against the law regarding deletion through legal discovery are one of the acts against the law in Law Number 28 of 2014 concerning Copyright with the principle of responsibility without error or direct responsibility or absolute responsibility.¹⁷

Conclusion

The Principle of Responsibility of Actors against the Law of Economic Rights in Copyright through legal discovery is the principle of absolute responsibility and the principle of indemnification or liability. The principle of Responsibility for Actions against the Law. Moral rights are the principle of responsibility with deliberate mistakes. The Principle of Responsibility for Unlawful Actions regarding the Cancellation of Copyright is the principle of responsibility. The Principle of Responsibility for Unlawful Acts regarding Abolition is the principle of absolute responsibility.

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¹⁷Mohammad Tahlil Azim, 'Corporate Social Responsibility and Employee Behavior: Mediating Role of Organizational Commitment', *Review of Business Management*, 2016 <<https://doi.org/10.7819/rbgn.v18i60.2319>>.

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