The Role and Authority of the Directorate General of Intellectual Property in Handling Complaints of Copyright Infringement in Indonesia

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Abstract: The rise of copyright infringement that occurred in Indonesia is very alarming, even the act of infringement seems to have been regarded as a common thing. DJKI is a government agency that organizes the formulation and implementation of policies in the field of intellectual property in accordance with the provisions of legislation, of course expected to provide copyright protection in Indonesia. The research method used is Normative Empirical, using a statutory approach that is analyzed qualitatively. DJKI has a role as a regulator, as an administrator, law enforcement, and dissemination of intellectual property, as well as the authority to receive and handle complaints of intellectual property violations in accordance with applicable procedures up to the stage of the prosecution process. It is recorded that the number of complaints submitted to the DJKI from 2019 to 2022 is 155 complaints and all of these complaints have been resolved by the DJKI, one of the complaints is copyright infringement that occurred in Central Sulawesi is a case of copyright infringement of Hasan Bahasyuan’s song, this complaint has also been resolved by the DJKI through a mediation process so that the case does not proceed to court. So it can be seen that DJKI has an important role in copyright protection in Indonesia.

Keywords: Copyright; Directorate General of Intellectual Property; Intellectual Property Rights.

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INTRODUCTION

Intellectual property rights are protection provided by the state for the results of a person’s intellectual abilities that are poured into a form of creation in the fields of art, literature, science, aesthetics, and technology. Copyright is one part of intellectual property rights. The requirements of a work in order for its creator to have the right to legal protection:

- **Fixed**, ideas are not protected by copyright, in order for an idea to be protected by copyright, it must first be realized in a tangible unitary form. That is the essence of the doctrine of fixation.
- **Form**, This fixation principle requires the existence of a certain form of a creation.
- **Original**, The Creation must be original. Original does not mean genuine, which means that it has never existed before or that it is sterile from the influence of other works.

Legal protection of a creation is born automatically, that is, it gets legal protection not because it is registered but since the first time an idea is poured into a real creation or since it is published / announced to the public. Copyright is a special right for the creator or recipient of the right to publish or reproduce his creation or give permission for it in the field of knowledge, art, and literature, with certain restrictions. Meanwhile, based on Article 1 number 1 of Law Number 28 of 2014 concerning Copyright, provides the definition of Copyright, namely the exclusive rights of creators that arise automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Exclusive rights in question is a moral right and economic rights granted specifically only to the creator, so that no one who can utilize or benefit from the copyrighted work without permission from the creator.

The rise of copyright infringement that occurs in Indonesia is very alarming, even the act of infringement seems to have been

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3. Direktorat Jenderal Kekayaan Intelektual, Modul Kekayaan Intelektual Tingkat Dasar Bidang Hak Cipta (DJIKI Kementerian Hukum dan Hak Asasi Manusia, 2020), 16.
considered as a common thing. This is due to the low level of public knowledge related to copyright and the lack of law enforcement on the offense so that it does not provide protection for the creator. Some violations that often occur are in this case the announcement, reproduction, duplication or buying and selling of a work. A form of violation that is rampant and unnoticed in today’s digital era is by making song covers and then uploading them to the internet through the YouTube, Instagram and Facebook platforms without the permission of the creator. The act of uploading a song cover to the internet is a form of publication or announcement of a work, and when the song cover is uploaded to several sites/platforms, there has been a duplication of a work which is an exclusive right granted only by the creator.

In Indonesia, there is a government agency/executing unit of the ministry in charge of specializing in Intellectual Property Rights, namely the Directorate General of Intellectual Property. The Directorate General of Intellectual Property is an implementing element under and responsible to the Minister of Law and Human Rights led by a Director General. The Directorate General of Intellectual Property has the task of organizing the formulation and implementation of policies in the field of intellectual property in accordance with the provisions of laws and regulations. In carrying out this task, the Directorate General of Intellectual Property carries out the following functions:

1. Formulation of policies in the field of

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legal protection of intellectual property, settlement of applications for intellectual property registration, investigation, settlement of disputes and complaints of intellectual property violations, cooperation, promotion of intellectual property, and information technology in the field of intellectual property;

2. Providing technical guidance and supervision in the field of legal protection of intellectual property;

3. Implementation of monitoring, evaluation and reporting in the field of legal protection of intellectual property;

4. Implementation of the administration of the Directorate General of Intellectual Property; and

5. Implementation of other functions assigned by the Minister.

Seeing the increasing copyright infringement that occurs which of course is very detrimental to the creator both in terms of moral rights and economic rights, as well as associated with the task of the Directorate General of Intellectual Property in making or formulating policies regarding the protection of intellectual property rights in order to provide a sense of protection to the creator, the authors are interested in conducting research with the formulation of the problem of how the role and authority of the Directorate General of Intellectual Property Against Copyright Protection in Indonesia.

METHOD

This research is a normative-empirical legal research which is a research that uses normative-empirical legal case studies in the form of legal behavior products.\textsuperscript{17} Normative-empirical legal research starts from written positive legal provisions that are applied to legal events in concreto in society, so that in its research there is always a combination of two stages of study, namely the stage of study of the applicable normative law, and the stage of application to events in concreto.\textsuperscript{18}

This research uses a statutory approach. The primary legal materials used are primary legal materials consisting of laws and regulations, court decisions, and court decisions.\textsuperscript{19} Meanwhile, secondary legal materials are textbooks containing basic principles of legal science, legal dictionaries, legal journals, views of legal experts\textsuperscript{20}, including direct interviews with sources to dig deeper by asking directly to respondents of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of Central Sulawesi Province related to matters according to the research discussed.\textsuperscript{21} The data analysis method uses a qualitative analysis method by processing the data obtained, after which a structured and thorough discussion is carried out, and then conclusions are drawn as an answer to the problems raised in the research.\textsuperscript{22}

\textsuperscript{17} Jonaedi Efendi and Johnny Ibrahim, \textit{Metode Penelitian Hukum: Normatif Dan Empiris} (Depok: Prenada Media, 2018), 149.


\textsuperscript{20} Zainuddin Ali, \textit{Metode Penelitian Hukum} (Jakarta: Sinar Grafika, 2021), 24.


\textsuperscript{22} Helaluddin and Hengki Wijaya, \textit{Analisis Data Kualitatif: Sebuah Tinjauan Teori & Praktik} (Makassar: Sekolah Tinggi Teologia Jaffray, 2019), 13.
ANYLISIS AND DISCUSSION
The Role and Authority of the Directorate General of Intellectual Property towards Copyright Protection in Indonesia

In Law Number 28 of 2014 concerning Copyright, it is clearly stated that copyright is the exclusive right of the creator that arises automatically based on the declarative principle, after a creation is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Exclusive rights in question is the right only owned by the creator or copyright holder to enjoy the economic rights of the work, no one else may enjoy or exploit the work without asking permission to the creator or copyright holder.

The rise of copyright infringement is very alarming, many examples of violations that even occur before our eyes that sometimes we do not realize but just ignored, this happens due to lack of awareness and knowledge of the protection of copyrighted works. Moreover, the creator in realizing a creation certainly requires energy, cost, time and thought and sacrifice, this is what makes the work has value so it needs to get protection.

A form of violation that is rampant and unnoticed in today’s digital era is by making song covers and then uploading them to the internet through the YouTube, Instagram and Facebook platforms without the permission of the creator. The act of uploading a song cover to the internet is a form of publication or announcement of a work, and when the song cover is uploaded to several sites/platforms, there has been a duplication of a work which is an exclusive right granted only by the creator.

The Directorate General of Intellectual Property has a very important role in copyright protection efforts, it can be seen from the duties and functions of the Directorate General of Intellectual Property in providing legal protection and law enforcement against copyright infringement that is rampant.

The role can be seen from the administrative services of copyright registration provided by

According to Max Wambrauw when talking about copyright protection, it is inseparable from the strategic role of the Directorate General of Intellectual Property in the nation’s economy, which outlines the role of the Directorate General of Intellectual Property includes 4 (four) main things, namely: The role as regulator, the role as administrator, the role in enforcing the law, especially in the field of copyright, as well as the role as dissemination of copyright that leads to commercialization of the copyright. Max Wambrauw further explained the 4 (four) roles of the Directorate General of Intellectual Property, among others:

1. Role as Regulator

The role as a regulator held by the Directorate General of Intellectual Property is the basis of the implementation of intellectual property protection, especially copyright, formulating policies in the field of legal protection of intellectual property. DJKI determines that in 2022 there are 16 Featured Programs, one of which is related to the Copyright regime as a thematic year, as the Year of Copyright while in 2023 it is designated as a thematic year for Trademarks with its Featured Program in the form of ‘One Village One Brand’. At least there are several things that are potential or have become challenges or obstacles in achieving the objectives and performance targets held by the Directorate General of Intellectual Property during 2022 and the next few years which can be divided into several parts, namely as follows:

1) The Industrial Design Bill should be enacted immediately considering that the Industrial Design Bill is expected to immediately anticipate the shortcomings of the current Industrial Design Law and also so that Indonesia can immediately ratify the international Hague Agreement and the establishment of the Industrial Design Appeal Commission;

2) Alignment of Law Number 20 of 2016 concerning Trademarks and Geographical Indications with Law Number 11 of 2020 concerning Job Creation;

3) Limited revision of the Copyright Law to improve articles to anticipate the development of copyright in the digital era;

4) Completion of Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications;

5) Minister of Law and Human Rights Regulation on the technical provisions of POPHC and those not regulated in the

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31 Hasil wawancara dengan Max Wambrauw, S.H., sebagai Kepala Divisi Pelayanan Hukum dan Hak Asasi Manusia, pada tanggal 8 Maret 2023, pukul 14.07 Wita di Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia Provinsi Sulawesi Tengah

32 Laporan Kinerja Instansi Pemerintah (LKjIP) Direktorat Jenderal Kekayaan Intelektual Tahun 2022, p. 13
law and elaborate on force majeure as an anticipation of DJKI in managing the application for recording of creations;

6) The existence of a legal vacuum in the regulations on Integrated Circuit Layout Design and Trade Secrets;

7) The absence of rules for patent applications related to national defense and security in terms of requests for opinions to relevant agencies in the publication section of the Directorate of Patents;

8) Draft Law on Geographical Indications (Separation from the Trademark Law);

9) Draft Guidelines and Technical Guidelines for the Supervision of Registered Geographical Indications;

10) Discussion of the Draft Presidential Regulation on the Ratification of the Nice Agreement in the process of waiting for the signature of the President of the Republic of Indonesia;

11) Draft Revocation of Government Regulation on Classification of Goods and Brand Services; and

12) Draft Repeal of Government Regulation on Trademark Registration.

2. Role as Administrator

The role of the Directorate General of Intellectual Property as an administrator means that the Directorate General of Intellectual Property always provides services to the public regarding administrative services for registering intellectual property. The hope of providing excellent administrative services is expected to encourage and facilitate the community in starting a business related to intellectual property, and ultimately can create a business climate through healthy business competition among fellow business actors whose business is related to intellectual property. The role as administrator is well implemented by the Directorate General of Intellectual Property, it can be seen in the table below:

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Year of IP Application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2019</td>
</tr>
<tr>
<td>Copyright</td>
<td>42.768</td>
</tr>
<tr>
<td>Industrial Design</td>
<td>4.361</td>
</tr>
<tr>
<td>Trademark and Geographical Indication</td>
<td>101.830</td>
</tr>
<tr>
<td>Total</td>
<td>161.565</td>
</tr>
</tbody>
</table>

Based on table 1 above, it can be seen that the achievement of this program output of 58.61% far exceeds the target set to be achieved in 2022, which is 15%. As for 2021, there was an increase in IP applications of 21.45% when compared to the base year/baseline in 2019, where the 2021 achievement also exceeded the specified target of 12%. Meanwhile, if we look at the progress of the increase in incoming IP applications in 2022 compared to 2021, there is an increase of 25.89%, this achievement also far exceeds the achievement of an increase per year both when compared to the increase in applications from 2020 to 2021 of 4.34% and from 2019 to 2020 which reached 17.11%.

3. Role in Enforcing the Law

Law enforcement in the field of intellectual property is carried out to protect intellectual property rights in Indonesia. With the protection of intellectual property rights, it is expected to encourage innovation and

33Ibid, p. 41
creativity so as to contribute to increasing national economic growth.\textsuperscript{34} The Directorate General of Intellectual Property is very serious and committed to being able to enforce the law on intellectual property violations, especially in handling cases of intellectual property violations. Based on data on intellectual property infringement cases reported to the Directorate General of Intellectual Property, it tends to increase from 2020 to 2022. So, to be able to suppress these violations, DJKI has made various efforts, namely collaborating in Monitoring / Supervision in the Field of Intellectual Property in order to Optimize the Role and Synergy of Law Enforcement Officials and Related Agencies in the Context of Supervision and Law Enforcement in the Field of Intellectual Property, besides conducting preventive education. In 2023, the Directorate General of Intellectual Property made 3 (three) plans to support the implementation of DJKI’s flagship program. The first is to form a special operation task force to monitor IP violations, the second is to cooperate with the owners of various companies and the State, and the third is to certify shopping centers based on intellectual property.

4. Role as Copyright Dissemination

The role of copyright dissemination by the Directorate General of Intellectual Property is also important considering this role leads to the acquisition of understanding and awareness of the importance of copyright protection to stakeholders. Socialization and dissemination activities related to copyright conducted by the Directorate General of Intellectual Property in order to empower intellectual property is expected to increase the number of stakeholders who have an understanding of copyright.

Related to the role in the protection element, for example, through the existence of the Directorate of Cooperation and Empowerment of IP which has the task of disseminating information and education to the public or related stakeholders in order to form an understanding so as to encourage the public to apply for protection of the IP it produces. Then related to the role in the protection element, there are at least 2 (two) things related to the DJKI business process, namely:

1) Protection element in terms of providing legal certainty on the submission of application for registration or recording of IP filed

2) Protection elements related to the law enforcement process, namely through the existence of the Directorate of Investigation and Dispute Resolution in the event of IPR infringement of registered/registered IP.

Efforts of the Ministry of Law and Human Rights of Central Sulawesi Regional Office in providing Copyright protection

In an effort to protect copyright, the Central Sulawesi Regional Office carries out dissemination and promotion of Intellectual Property which is held annually so that it aims to provide understanding for the community, khususnya for copyright protection, recorded in 2022 the Central Sulawesi Regional Office has carried out 66 dissemination activities.\textsuperscript{35} Since the last 3 years there have been several cases of complaints regarding violations of

\textsuperscript{34} Rencana Strategis (Renstra) Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia Sulawesi Tengah, 29

\textsuperscript{35} Laporan Kinerja (LKj) Kantor Wilayah Kementerian Hukum dan HAM Sulawesi Tengah Tahun 2022, 148
Intellectual Property, but only 1 case related to Copyright, namely in 2020 there was 1 case of Complaint of Intellectual Property Violation in the Palu City area.\(^{36}\) This case was a violation of the commercial use of a song by Hasan Bahasyuan. However, this case has been successfully handled and resolved through a mediation process, so that it does not continue into the realm of court.

The number of complaints on violations of Intellectual Property Rights in 2020 consists of; The implementation of handling cases of violations of Intellectual Property Rights reached 34 cases with 32 cases being the 2019 Incident Report and 2 cases handling the 2020 Incident Report. In 2020, 30 complaints of violations of Intellectual Property Rights have been received where all complaints have been administered and interviews have been carried out. In 2019, 49 cases of complaints were handled (24 Event Reports 2018 and 25 Event Reports 2019) with 43 complaints in 2019. The high realization of the percentage decrease in complaints of violations of Intellectual Property Rights in 2020 which reached 30.61% when compared to the achievement target of 5% was partly due to the following factors:

2. The Directorate General of Intellectual Property since 2018 has actively coordinated with Kominfo in providing recommendations for closing websites that violate intellectual property rights.

The level of infringement of Intellectual Property Rights is highly dependent on the number of incoming complaints, this must also consider the number of Intellectual Property Rights protected in the current year and related to the steps of Law Enforcement Officials in taking massive preventive steps. In 2022 there were 46 complaints of IPR infringement that were handled or followed up divided by the number of complaints of infringement that entered in 2022, namely there were 46 (forty-six) so that the formulation for calculating the achievement of the program output above is:

\[ \frac{46}{46} \times 100\% = 100\% .\]

In addition, according to I Nyoman Sukamayasa\(^{39}\), there is a concrete role performed by DJKI towards copyright protection in Indonesia, namely:

1. Providing services to the public related to administration (registration and complaints of copyright infringement)
2. E-Tutorial KI facilities to improve knowledge and understanding of the community
3. Annual program of socialization of

\(^{36}\) Laporan Kinerja (LKj) Kantor Wilayah Kementerian Hukum danHAM Sulawesi Tengah Tahun 2021, 95

\(^{37}\) Ibid, p. 50

\(^{38}\) Ibid, p. 49

\(^{39}\) Hasil Wawancara I Nyoman Sukamayasa, S.H., sebagai Kepala Subbidang Pelayanan KekayaanIntelektual, pada tanggal 10 Maret 2023, pukul 15.23Wita di Kantor Wilayah Kementerian Hukum danHak Asasi Manusia Provinsi Sulawesi Tengah
copyright protection to the regions
4. Conduct supervision in the form of seminar programs to prevent infringement of Intellectual property rights 4.
5. Forming a Copyright Content Application Law Enforcement Patrol Team will cooperate with the National Collective Management Institute and the Ministry of Communication and Information of the Republic of Indonesia in taking action against sites and digital platforms that are proven to infringe copyright without permission.

Furthermore, I Nyoman Sukamayasa, said that in order to carry out the role of the Directorate General of Intellectual Property, the activities of organizing the copyright system can be further improved by carrying out several aspects of improvement within the Directorate of Copyright as follows:
1. Strengthening the function of the National Collective Management Institution in withdrawing and distributing royalties in the field of music and songs through the establishment of the Draft Government Regulation on Royalty Management in the Field of Music and Songs which regulates the music and song data center to inventory songs owned by a creator or musician in Indonesia;
2. Limited revision of the Copyright Act to perfect the articles to anticipate the development of copyright in the digital era;
3. Accelerating the development of the e-Copyright application, the application module for the appeal decision feature and the post-recording module for the mutation and license features;
4. Introducing the Copyright e-Mobile application to the public;
5. Establish a team of copyright experts consisting of 3 (three) people who are experts in the field of technology and art;
6. Conduct a study on the classification of creations following changes in technology and creative industries in society such as graphical user interface technology, artificial intelligence, virtual reality, augmented reality.

CONCLUSION
The Directorate General of Intellectual Property has a role as a regulator, administrator, law enforcement in the field of Intellectual Property, and dissemination of Intellectual Property leading to the commercialization of Intellectual Property. While the authority of DJKI in copyright protection is to receive and handle complaints of intellectual property infringement in accordance with applicable procedures up to the stage of the enforcement process. In general, DJKI received complaints of intellectual property infringement cases tend to increase from 2019 to 2022, recorded as many as 43 complaints (2019), 30 complaints (2020), 36 complaints (2021), and 46 complaints (2022), from the complaints received by DJKI, all of which can be resolved by DJKI. However, the specific copyright infringement that occurred in Central Sulawesi is a case of copyright infringement of songs created by Hasan Bahasyuan. This case has then been resolved through a mediation process so that it does not reach the realm of court. This illustrates that DJKI plays an important role in copyright protection, especially with regard to handling complaints of copyright infringement.

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**Interview**

Interview with Max Wambrauw, S.H., as Head of Legal Services and Human Rights Division, on March 8, 2023, at 14.07 Wita at the Regional Office of the Ministry of Law and Human Rights of Central Sulawesi Province.

Interview with I Nyoman Sukamayasa, S.H., as Head of Subdivision of Intellectual Property Services, on March 10, 2023, at 15.23 Wita at the Regional Office of the Ministry of Law and Human Rights of Central Sulawesi Province.