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Author's Right Is Not Only Copyright

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This article discusses the difference between the concept of Author's Right and Copyright. These two concepts are often mistakenly considered to be inter-changeable. The purpose of this article is to help readers obtain a better insight into the basic concept of Author's Right and Copyright.

Keywords: Author's right, Copyright

I. Introduction

In writer's view, 'Author's Right' (*Hak Cipta*) is a shorter form of the term 'Right of the Author' (*Hak Pencipta*). This term was used for the first time in the 1952 Cultural Congress in Bandung. At that time, cultural experts felt uneasy about the term 'Right of the Author' which was a translation of '*auteursrecht*' used in the 1912 *Auteurswet*. According to the participants of the Congress, *auteursrecht* is not only related to literary works or writing, but it also includes a broader scope, namely other forms of creative works, including music, sculpture, and other forms of cultural works. It was therefore suggested that the term 'right of author' as a translation of *auteursrecht* be replaced by the term Right of the Author (*Hak Pencipta*), which was then abbreviated as Author's Right (*Hak Cipta*).

The 1912 *Auteurswet* itself was a law enacted in The Netherlands. Based on the principle of concordance, it was subsequently applied to Europeans in the colonies, including the territory of the Indonesian Archipelago.² The legal basis for applying *Auteurswet* to Europeans in the territory of the Indonesian Archipelago was Article 131 paragraph (2.a) of the *Indische Staatsregeling* (IS).³

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¹Please refer to Ajip Rosidi, *Undang-undang Hak Cipta 1982: Pandangan Seorang Awam* (Author's Right Law 1982: Viewpoint of a Layperson), (Jakarta: Djambatan, 1984), p.3.

²The Indonesian state was not in existence yet at the time, when Indonesia's territory was referred to as the Dutch Indies (Netherlands Indie).

From the historical point of view, it can be considered that the concept of *auteursrecht* as provided for in the 1912 *Auteurswet* is a correction *vis a vis* the *Copyright Act* applied in the United Kingdom. At the same time, copyright was introduced in the United Kingdom with the invention of the printing press in the XVth century, when William Caxton invented the printing press in 1476. With the invention of the printing press, it became easier to multiply (copy) a written work, because it no longer had to be copied manually using a pen or other writing tools.

With the invention of the printing press, the printing industry was created. The printing press was also used by publishers to publish written works, creating competition in the publishing and printing business. Moreover, this printing technology also posed a threat on the King, as writings criticizing the official teachings of the church, and expressing political views in contradiction of the King's policy were published. Naturally, the King did not find such condition comfortable, and therefore issued a policy to control publishing activities. In 1534, the King issued a regulation prohibiting the publishing of any written works which did not have a license from an official censorship body.

In 1557, the King granted the *Stationers' Company* (a group of publishing and book trading companies in London) the right of monopoly to publish books or printed articles. However, such monopoly right lasted only until 1694, when it was revoked, as a result of which these publishing companies felt threatened by competition. They subsequently conducted lobby with the legislature demanding legal protection, arguing that if they were not protected, there would be anarchy eventually resulting in economic disaster. They were successful in lobbying, as a result of which the 1710 *Copyright Act*, or better known as *The Statute of Anne* of the year 1710, was issued.⁴

It is evident from this story that the idea of copyright protection in the United Kingdom has nothing to do with the Author. Copyright was created as a

³Article 131 paragraph (2.a) of the IS reads as follows: "Under this ordinance concerning Civil and Commercial Law: (a) for the European group, the laws applicable in The Netherlands shall be applied ...". The original text in Dutch reads as follows: "In de ordonnances regerende het burgerlijk – en handelsrecht worden: (a) voor de Europeanen de in Nederland geldende wetten gevolgd. ...". Refer to *De Wetboeken, Wetten en Verordeningen, Benevens de Grondwet van de Republiek Indonesie*, (Jakarta: Ichtiar Baru van Hoeve), 1989, p. 143.

⁴For complete information on the history of copyright, read Craig Joyce, et al., *Copyright Law*, 5th ed., (Matthew Bender & Co., Inc. member of LexisNexis, 2001), pgs. 15-19.

result of the threat against the economic interest of members of the group of companies associated with the Stationers' Company.

Copyright protection in the United Kingdom led to a debate, particularly in states on the European Continent. Such debate was based on the thinking about justice. It was considered to be highly unjust if the author of a written work did not obtain protection. Why would only the publishing industry obtain the right to copy, or copyright? After all, even Martial (a Roman poet) had protested strongly when his poems had been recited in public without his permission.⁵ Hence, from the moral point of view, the author has a greater right to obtain protection than the publisher.

It was in this context that the idea of providing protection to the author emerged in Continental European countries, in the form of *droit de auteur* (France) or *auteursrecht* (The Netherlands). That is why in addition to the economic right to copy and publish, an author also has the moral right to obtain protection in the form of the right of attribution between himself/herself and the works. Such creative right may not be separated from the author of the works (*doctrine of paternity*). Similarly, a works may not be modified without the permission of the person who has created it (*doctrine of integrity*).

Such moral right is not known under the British legal system,⁶ particularly under the *copyright* system, because the issue of copying has nothing to do with the moral right of the author. The main focus is not on the works, but rather on the right to copy and the right to publish. This is exactly the view that subsequently received criticism in Continental European countries. According to the doctrine of justice, the author, rather than the publisher, should be given the right to copy and publish. That is why the term used in the countries of Continental Europe is not copyright, but author's right (*droit de auteur*).

Such legal teaching based on moral was used as a basis in enacting laws, in The Netherlands in the form of the 1912 *Auteurswet*. In Indonesia, the term *auteursrecht* (author's right) was subsequently translated as *Hak Pencipta* (Right of the Author) or briefly as *Hak Cipta* (Author's Right). Based on the

⁵See Paul Goldstein, *Hak Cipta: Dahulu, Kini, dan Esok*, (Jakarta: Yayasan Obor, 1996), pgs. 42-43. Original title "Copyright's Highway, From Gutenberg to the Celestial Jukebox".

⁶Although in the course of further development, a convergence occurred between the copyright and author's right system. Read Martha Woodmansee & Peter Jaszi, ed., *The Construction of Authorship*, (Durham and London: Duke University Press, 1994).

foregoing it is obvious that the doctrine applied in Indonesia is not the British model of copyright, but rather the Continental European model of author's right. However, it needs to be understood that the term *Hak Cipta* (Author's Right) also implies the right to copy and the right to publish, because those are the rights that must be granted to the author, rather than the publisher. Based on this doctrine, the author is the owner of the right to copy works and to publish such works with the aim of obtaining economic benefit.

The right to copy and the right to publish can be granted to another person based on an agreement. Such agreement is referred to as license agreement (the granting of permission/license). However, the right of ownership still belongs to the author. Naturally, the works cannot be separated from its author. Morally, an author has the non-alienable absolute right on his/her works. This is the basic moral right developed in the countries of Continental Europe based on the natural law doctrine.

An example of this basic concept is the attribution of the author to his/her works. Such attribution is inherent. For instance, the painting of Monalisa will always be Leonardo Da Vinci's work. The song *Bengawan Solo* will always be the work of Gesang. The novel *Ada Apa Dengan Cinta* (What Has Happened to Cinta) will always be the work of Habiburrahman.

II. The Substance Of Author's Right (*Hak Cipta*)

Pursuant to the Author's Right Law (*Undang-undang Hak Cipta*) No. 19 Year 2002 (hereinafter referred to as UUHC 2002), Author's Right (*Hak Cipta*) is the exclusive right of the author to announce and copy his/her work, including the right to grant license or to prohibit the unauthorized (non-licensed) use of the work by another party.⁷ Compare to the US Copyright Law, which does not define *copyright*, only the *copyright owner*.⁸ This is understandable,

⁷Refer to Article 1 sub-article (1) of Law No. 19 Year 2002 concerning Author's Right (*Hak Cipta*) (UUHC). The complete text of this article reads as follows: "Author's Right (*Hak Cipta*) is the exclusive right of the Author or the party receiving such right to publish or copy his/her work or to give permission to do so, without prejudice to the limitations based on applicable laws and regulations".

⁸Sec d 101 US Copyright Act: "Copyright owner with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right". There is no mention whatsoever about the definition of copyright.

as the U.S. applies the ownership, rather than the authorship approach. The same approach is taken in the United Kingdom, which is used as reference by the U.S. common law system.⁹ Unlike the Indonesian UUHC 2002, the *Copyright Act* of the United Kingdom does not contain a particular definition of *copyright*. In the above mentioned two common law system countries, there is more emphasis on the substantive right of the copyright owner, rather than the substantive right of the author. This is in line with the above described brief historical background of copyright.¹⁰

Based on the definition of Author's Right (*Hak Cipta*) under the UUHC, it becomes obvious that author's right is the right to publish and to copy a work. This means that under the UUHC, *copyright* is one of the substantive elements of the author's right. Indeed, the essence of author's right is the right to obtain exclusive economic benefit from the exploitation of the works concerned. Economic benefit can be obtained from works by copying and then publishing it, or by making such works available for public. The composer of a song will not obtain economic benefit from his/her song unless it is published for the public. It can be made available to the public through live performance or by replaying it on a phonogram.

In order to be able to replay a song in multiple places, it has to be recorded and copied. In order for a recording to be enjoyable and to have a certain quality and esthetic effect, it has to be recorded using certain adequate equipment, and it has to be performed by artists or musicians who possess certain skills. This is where related rights come into play in the process of making the song available for the public.

The author has the full right to copy and publish his/her works. However, in the process of copying it in an appropriate form, the author usually involves artists, musicians and a recording company by granting them a license. The

⁹The United States used to be a British colony, therefore the source of the applicable law is British law. The copyright protection system in the United Kingdom was adopted into U.S. system in 1790 by the enactment of the Copyright Act of The United States 1790. See J.A.L. Sterling, *World Copyright Law*, London: Sweet & Maxwell, 1998, p. 5.

¹⁰In general summary, Sterling concludes that copyright is: "the right granted for the protection of literary, dramatic, musical and artistic works, and other works resulting from the author's own intellectual creation". Sterling does not use the term works of author, but rather works resulting from the author's intellectual creation. In other words, Sterling does not explicitly recognize that copyright should be the right of author. This is understandable, considering that Sterling's main reference is the British copyright system. Refer again to Sterling, *World Copyright Law*, p. 4.

recording company then produces a master recording, which needs to be copied before it can be sold. In this case, the recording company obtains copyright to the master recording. At the same time, the artists involved obtain the right for performing the song concerned, either in the form of the recording itself, or in the form of live performance. This is what we refer to as the performing rights of artists/musicians.

It is in this context that the technical terms in the field of author's rights were created, namely: works in the form of songs, and phonograms or sound recordings. As for works, all rights belong to the author, both economic as well as moral rights. As for sound recordings (master recording), the copyright belongs to the recording company based on a license granted by the author. Actors are also granted copyright for the recording, in addition to the performing rights on the sound recording concerned. In other words, there are several rights attached to the sound recording of a song, namely: (1) the author's right on his/her works which includes both economic as well as moral rights, (2) copyright of the recording company on the sound recording, and (3) the performing right of actors on the recording concerned.

The recording company's copyright on the sound recording is mechanical, so it is often said that recording companies have mechanical rights on the sound recording concerned.¹¹ Mechanical right is normally related to a mechanical process in the context of copying. Starting from the song (works) composed by the composer, a mechanical license¹² is granted to the recording company for producing the master recording (phonograms). Before the digital era, the process of recording involved a mechanical process for producing recordings with a certain quality. It was in such context that the author granted a license in the form of mechanical right to the recording company. A popular example today is the ringtone (not ring back tone) business. The ringtone business involves the mechanical rights of the recording company.

The above mentioned issue raises a further question as to whether or not the author still has a right on the sound recording concerned? As far as the copyright on the sound recording is concerned, such right is normally granted to

¹¹"Mechanical right is a more or less colloquial term to describe the right of author to authorise the sound recording of his work". See Sterling, *World Copyright Law*, p. 778.

¹²About mechanical licence, read Craig Joyce, et al., *Copyright Law*, (Matthew Bender & Co, Inc.: 2001), p. 511.

the recording company based on a sound recording agreement. Such agreement usually limits the author's right in granting the same right to another company. This is referred to as a license with exclusive rights. Thus, during the agreement's term of validity, even the author himself/herself is not allowed to copy the recording without the permission of the recording company.

However, it needs to be understood that although the Author does not have the copyright on the sound recording, the Author is still the owner of the works in the sound recording concerned. Accordingly, he/she can still grant a license to another party to record the works concerned in a different music genre. For instance, if the Author grants company A the license to copy his/her works in the pop genre, the Author still has the right to grant a license to company B to copy his/her works in the *keroncong* or *dangdhut* genre. And so on and so forth.

As for the right of communication to public of works, it remains indefinitely in the possession of the author. That is why, although the copyright has been granted to the recording company, once the works in the recording is played in public places, such as hotels, restaurants, karaoke lounges and others, including the media of cellular phone such as ring back tone (RBT), the author is still entitled to obtain royalty for such playing of the song.¹³ In addition to the above, the actors also have the rights related to the playing of such sound recordings in public places.¹⁴ Accordingly, both artists/musicians, as well as the author, have the right to receive royalty payment on the playing of a song in public places, particularly related to commercial activities, such as hotels, restaurants, karaoke lounges, RBT, etc. This is due to the fact that the granting of copyright by the author to the recording company or the artist does not mean that the publishing right on the song (*works*) concerned is also granted to them. However, it needs to be noted that publishing rights are not limited to the right of communication to public. At the same time, in the context of distributing, selling and leasing the sound recording concerned, which are often referred to as activities related to making available for public, such right is also often granted to the recording company concerned. It would be illogical for a recording company that produces the master recording not to be allowed to sell the product of its own sound recording to the public.

¹³Read Article 2 paragraph (1) of UUHC 2002.

¹⁴Read Article 49 paragraph (1) of UUHC 2002. In WIPO Copyright Treaty 1996 it is referred to as Right of Communication to Public.

Based on the foregoing, it is obvious that in the context of works in the form of sound (audio) there are several forms of expression, namely the works which remains the author's right, and the sound recording, which is the right of the recording company and the actors concerned. This can be illustrated in the following diagram:

In the context of works in the form of literary works, the details are slightly different, particularly in the context of the right to publish. The author of literary works holds the author's right on the script of such literary works for an indefinite period of time. However, once the script is submitted to the book publisher to be printed and published in the form of a book, the book publisher concerned is usually granted the copyright. Thus, there are two types of right in a book, namely: the author's right on the script held by the author, and the copyright on the book held by the book publisher.

The difference between the author's right on the script and the copyright on the book can be easily distinguished based on the right to modify the works, which belongs to the area of moral rights. For instance, if the novel *Bumi Manusia* (Man's Earth) written by Pramoedya Ananta Toer is to be translated into French, the permission to change the script of the novel into French can only be granted by Pramoedya as the author, rather than the publisher of the novel, even though the publisher holds the copyright granted by Pram as the author of the script. Similarly, any person interested in transforming the form of expression of Pramoedya's work from literary works into visual works (in the form of a film, for example), the permission would have to be obtained from the author of the script, rather than the publisher.

It is important to note that the moral right is inalienable from the economic right.¹⁵ For instance, granting permission for changing the form of expression of the works is entirely the author's right, although this right belongs to the category of moral right; however, such right can still be related to fee or royalty payable by the person who wishes to transform the works concerned. For instance, for the purpose of translating the works of J.K. Rowling with the title *Harry Potter* into Indonesian language (*Bahasa Indonesia*), the author's permission must first be obtained (moral right). Naturally, such permission can be granted after agreement is reached about a certain amount of royalty (economic right) to be paid to Rowling as the author. Thus, any separation of moral right and economic right is only relevant in the context of academic study, merely for the purpose of facilitating understanding.¹⁶ However, the most important aspect of the concept of moral right is that it represents the personality right of the author on his/her works. This reflects the integrity and inalienability of the author and his/her works.¹⁷

III. Author's Right In Related Rights

Related rights are secondary rights. The reason they are referred to as secondary or related rights is because in general they are related to the author's right.¹⁸ For instance, the author's right on a song can create related rights in the form of a performer's rights if the author grants permission to artists to perform the song concerned, either in the form of a live show, or in the form of a sound recording. The author's right on a song can also create related rights in the form of the producer's rights when the composer (author) of the song concerned

¹⁵This view has developed in Germany which does not make a distinction between the author's moral rights and economic rights on his/her works. See J.A.L. Sterling, *World Copyright Law*, (London: Sweet & Maxwell, 1998), p. 38.

¹⁶The distinction between moral rights and economic rights (dualist theory) originates from France, which distinguishes between moral rights and economic rights. Sterling, *ibid.*, p.38.

¹⁷An in-depth study of this concept of moral rights can be found in Sterling, *ibid.*, pgs.279-303.

¹⁸It needs to be noted that in general, related rights are indeed related to the author's rights, however, in certain respects related rights, such as broadcasting rights, can also stand on their own such as broadcasting rights for soccer games. It goes without saying that soccer players are not the authors of the soccer game; rather than that, they are merely actors of the soccer game. Under the Indonesian legal system, related rights are provided for under Law No. 19 Year 2002 concerning Author's Rights (UUHC), specifically under Chapter VII concerning Related Rights (Article 49 up to 51).

grants permission to a recording company to produce the master recording (sound recording/phonograms) of the song concerned with the artists.

There are three types of related rights recognized under UUHC 2002, namely: performer's rights, producer's rights, and the broadcasting rights of the broadcasting institution.¹⁹ Under the international legal system, related rights are provided for separately from author's right. Related rights are spelled out in the 1980 Rome Convention as well as in the 1996 WIPO Performances and Phonograms Treaty (WPPT). At the same time, under the international legal system, Author's Rights are articulated in the Berne Convention and the WIPO Copyright Treaty 1996 (WCT).

Related rights which are derived from the author's right are normally created in the process of commercializing certain works, particularly in the form of music or song. This occurs when the composer of a song grants permission to the artists and producer to produce a sound recording of the song concerned. In this context, the author grants right to the artists and the producer to copy and to distribute the sound recording concerned (right of distribution) for the purpose of sale (making available for public). By doing so, both the artists as well as the producer obtain copyright on the phonograms from the author. At the same time, the author remains the owner of the author's right on the works concerned.

The difference between the producer's copyright and the author's right can be illustrated by the example when the genre of a song composed by A is to be converted into a different genre, as mentioned earlier. For instance, A composes a song in the rock genre. The song is then recorded by company X. In this case, A remains the owner of the author's right, while X is the owner of the copyright on the recording concerned. If another party (B) wishes to change the genre of this music to *dangdut*, B must ask for permission from A, rather than from X. It becomes obvious here that even though X is the holder of the copyright on the sound recording of A's song, it does not have the right or authority to grant permission to B to change the genre of the music into a different genre. This is entirely the right of A, and it remains the right of A.

The following diagram may be helpful in facilitating a better understanding of the above:

¹⁹See Article 49 of UUHC 2002.

In the above mentioned example Actor B, who has changed song A from the rock genre into a *dangdut* song, can appoint company Y to record such *dangdut* song. In this case, based on the moral right doctrine, A grants a license to B to alter the works while granting permission to B to copy A's song (*copyright*) which has been changed into the genre of *dangdut*. For such permission, B can provide economic compensation to A in the form of royalty for altering and copying A's song.

The above described examples demonstrate that the author's right contains copyright that can be granted by the author to any party whatsoever to copy the works in a new form (in the form of sound recording). Although the producer of the recording subsequently holds copyright on the sound recording concerned, it does not prejudice the author's right to grant permission to another party to alter the works concerned. Such party can also be granted permission to copy the altered works. It is therefore obvious that the author can grant permission to various parties to copy his/her works in different forms. At the same time, the party granted copyright on the works concerned has the copyright only on the form of expression, as mentioned in the above quoted examples.

IV. Some Important Matters Related To The Concept Of Copying And Publishing

Copying is also often referred to under the term reproduction. The Author's Right of 2002 uses the term multiplying, which implies the multiplication of the works, either in its entirety or in a substantial part, by using the same or different

materials, including the permanent or temporary alteration of the form.²⁰

As a matter of fact, the definition referred to under Article 1 sub-article (6) of UUHC 2002 is not clear, or at least not completely clear. At the same time, no explanation is to be found in the official Elucidation. Therefore, there is no authentic interpretation of the term "altering" ("*mengalihwujudkan*"). Under the author's right doctrine, altering implies the alteration of the form of expression, for example alteration from literary works to visual works, as in the example of converting a novel into the form of a film (cinematography). Undoubtedly, this kind of an alteration cannot be considered as being identical to copying.

It is therefore appropriate to explore further the meaning of the word multiplication, by exploring the meaning of the word *reproduction* as intended in the US Copyright Law, for comparison. It is evident that, unlike the UUHC 2002, there is no single definition of *reproduction* under the US Copyright Law. This is understandable, considering that there are many different forms of reproduction, depending on the form of the works concerned. Reproduction of literary works would be certainly quite different from the reproduction of musical works, and so forth.

Under the U.S. Copyright system, reproduction means: reproduce a material object in which the work is duplicated, transcribed, imitated or simulated in a fixed form, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine device.²¹ Based on such definition, it becomes evident that *reproduction* includes *duplication*, *transcription* (for example, transliterating from stenographic codes into alphabetic letters, *imitation* and *simulation*. *Duplication* is usually intended to mean multiplying from one into two, and so forth. The product which is subject to duplication does not undergo any alteration whatsoever. An example of this is the photocopying of a written document or book.

In practice, the duplication of works is the most frequently occurring practice, including the practice of book, sound recording or video recording piracy. These practices are often referred to as *piracy of copyrighted works*. It needs to be understood that numbers can be added by duplication using different types of media. For example, the script is first printed on paper in the form of a book (hard copy). The script is then published using the electronic media (soft

²⁰Article 1 paragraph (6) of Law No. 19 Year 2002 on Author's Rights (UUHC 2002).

²¹Craig Joyce, et al., Copyright Law, 5th ed., (LexisNexis, 2001), p. 497.

copy). Based on such understanding, the expression *now known or later develop* mentioned in the US Copyright Law takes on a concrete meaning. It implies that the media for the expression of the works can change in line with the development of technology used for storing the data. While in the past it was unimaginable to store a thousand books in a tiny flash disk small enough to be held in one's palm, the media of flash disk has now become an ordinary item. There may be other increasingly practical data storage tools or media in the future. However, in the context of the duplication, works can be duplicated regardless of the media, without altering the original form, namely literary works, musical works, or visual works.

Furthermore, *transcribing* is intended to mean the possible forms of conversion of a certain type of letters, language (translation) and even a form of expression. The most recent example of this is transcribing text from audio into literal form. For instance, transcribing the recorded minutes of a meeting into written form on paper or into electronic form.

Meanwhile, *imitation or simulation* is usually intended to mean a form of imitation by taking significant parts of the works and adding or combining them into a form that is somewhat different, but contains the same elements. The following painting of Monalisa is an example of the imitation or simulation of works, resulting in the creation of another works.

Source: www.google.com

The two images above indicate different elements, namely in the part of the head, but overall they contain the same elements. The above two images can be created using different media. For instance, the original Monalisa painting is

obviously painted on canvas, while the reproduction is made in digital form or in the form of electronic data. However, there are strong resemblances in the above two images, except for the part of the head, which was intentionally altered by the person who created these images. Anyone could easily tell that the second image is a simulation or imitation of the first one.

In other instances of imitation or simulation, it may not be as easy to determine whether an image is a simulation of another one, particularly when the form of expression is literary works or cinematography. For instance, it was contested in the past that an Indonesian soap opera imitated the foreign soap opera with the title *One Liter Tears (OLT)*. Although it was obviously not a case of duplication, as there was no duplication of the tangible form of the film *OLT*, people watching these two soap operas could easily recognize the identical elements, either in the setting or in the flow of the story.

Based on the foregoing, it is evident that copyright is mainly related to the reproduction of works in a form which continues to evolve in line with technological developments. At the same time, author's rights place a stronger emphasis on the author's rights that are not limited to reproduction, but are also related to matters concerning the author's integrity and reputation.

In addition to reproduction, publication is another important issue related to the doctrine of Author's Rights. In the UUHC 2002, there is an overlap in the definition of publication, as evident in the provisions of Article 1 paragraph (5) which reads as follows:

"Publication is the reading, broadcasting, display or dissemination of Works using any instruments whatsoever, including the media of internet, or in any way whatsoever, hence the Works can be read, heard or viewed by other people".

There is a clear distinction between publication in the sense of the distribution of the works in tangible form, and the performance or broadcasting or display of the works. Distribution implies to mean the sales, lease, enabling other people to own the tangible form of the works. For instance, a CD containing musical works which can be purchased in music stores. A book containing script or images can be owned by a person who purchases it in a bookstore. And there are many other similar examples. At the same time, performing musical works, broadcasting a song or a film, or displaying a painting or a sculpture does not enable the listener or the viewer to become the owner of the tangible form of such works, unless the owner of the tangible form of such works has the intention to sell the same.

In the context of distribution, the object is the tangible form of the media containing the works concerned. Such tangible form of the works (which are intangible) is then distributed, sold or leased to another person, enabling such person to enjoy the works concerned. At the same time, in the performance or display the object is intangible, namely an activity that enables another person to hear, read or view the works.

In simple terms, publication includes two categories, namely: (1) activities enabling other people to possess objects containing certain works, and (2) playing, showing, broadcasting or performing works, allowing other people to enjoy the works concerned without coming into possession of the object. For instance, a collector of paintings who displays the paintings from his/her collection in an exhibition. A lot of people come to see the painting collection. In this case, the owner of the paintings can be considered to engage in publication by displaying his/her paintings for public viewing.

The right for the distribution of works is usually related to the right for the reproduction of the works concerned. A person granted reproduction right is usually also granted (sometimes even automatically) distribution right to sell the product concerned. At the same time, the right to play the musical works rests indefinitely with the author concerned, while the right to exhibit works of painting follows the owner of the painting concerned. It is therefore evident that there is a significant distinction between the publication of musical works and painting works. Consequently, the publication of works needs to be understood on a case by case basis, depending on the form of the works concerned.

Based on the foregoing, it would be recommendable to have a more specific and clear-cut definition of publication than the one currently provided for under the UUHC 2002.

V. Conclusion

The purpose of this article is to demonstrate to the reader that author's right is not identical to copyright. Copyright is only a part of Author's Right. Based on its historical background, author's right is indeed a correction of the copyright doctrine which first became known in the United Kingdom. Such correction was made on the European continent based on the doctrine of justice (natural law), namely that it is more appropriate for the author, rather than the copyright-based companies, to obtain protection. Protection is granted to

such companies in respect of rights that derive from the author. It is therefore inappropriate for such companies to take over all of the author's rights based on agreement.

Under contract law there is also a principle that the agreement may not be contradictory to the law. This implies that agreement may not be used by the industry as a tool to misappropriate the author's rights through the institution of contract. Author's rights are granted by the force of law. It is therefore appropriate if such rights are not alienated from the author in the name of the freedom of contract. Indeed, this is the very essence of the protection of author's rights.

Bibliography

Rosidi, Ajip. *Undang-undang Hak Cipta 1982: Pandangan Seorang Awam*. (Author's Rights Law of 1982: The Viewpoint of a Layperson) Jakarta: Djambatan, 1984.

Joyce, Craig, et al. *Copyright Law*, 5th ed. Matthew Bender & Co., Inc. 2001.

Sterling, J.A.L. *World Copyright Law*. London: Sweet & Maxwell, 1998.

Goldstein, Paul. *Copyright: Principles, Law and Practice*. Little Brown & Co., 1989.

Goldstein, Paul. *Hak Cipta: Dahulu, Kini, dan Esok*. Jakarta: Yayasan Obor, 1996.

Law No. 19 Year 2002 concerning Author's Rights (*Hak Cipta*).

De Wetboeken, Wetten en Verordeningen, Benevens de Grondwet van de Republiek Indonesie. Jakarta: Ichtiar Baru van Hoeve, 1989

Rome Convention 1980.

WIPO Performances and Phonograms Treaty 1996.

US Copyright Act 1976.

WIPO Copyright Treaty 1996.

Glossary

Hak Cipta = Author's Right

Ciptaan = works

Pencipta = author

Perbanyakan = reproduction

Pengumuman = publication

Benda fisik = tangible form