



Juridical Study on the Sale of Plowing Books Through E-Marketplace Based on Positive Laws in Indonesia

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Abstract

Nowadays, the rapid technological developments increasingly have an influence on changes in people's behavior and lifestyles. The activities of offering, selling, and buying an item or even service can be done through online sites, one of which is an e-marketplace. The model of selling pirated books began to shift when the discovery of internet technology, if previously pirated books were sold at roadside stalls, but now they have developed into online sales. The convoluted process must be passed by the copyright holder if they complain about problems regarding their books being plowed and freely traded on e-marketplace. The method used in this study was a normative juridical research. Legal research was carried out to produce new arguments, theories, or even concepts as prescriptions in solving the problems. The results of the research conducted by the electronic system operator have the responsibility to follow up on any complaints or reports on the existence of electronic information or documents that are prohibited by law in their electronic system, if proven guilty, the merchant will be cut off access. In the increasingly rapid development of the world of e-commerce today, it is accompanied by the development of types of crime in the digital world, so that the urgency of regulating e-commerce specifically in a law is needed.

Keywords: e-marketplace; pirated books; sales

INTRODUCTION

The increasingly rapid technological developments have an influence on the changes in people's behavior and lifestyles. The activities of offering, selling, and buying an item or service can be done through online sites, one of which is an e-marketplace. Transaction processes carried out through electronic systems, especially e-marketplaces, are becoming popular among the public.

The trading platform through an electronic system in the form of user generated content (UGC), refers to a trading platform where the public can apply to become a member or have an account on the platform also enter data and/or information into the platform. The platform provides information on sellers, goods, and/or services that are sold online so as to create convenience for the public in conducting trade transactions through an electronic system which in turn can improve the community's economy. In addition, to these conveniences, the platform is also vulnerable to abuse by account owners and/or uploaders who intentionally violate someone's intellectual property rights by selling pirated books.

The model of selling pirated books began to shift when the discovery of internet technology. If previously pirated books were sold at roadside stalls, but now they have

developed into online sales. When it comes to book piracy, Indonesia has a bad reputation. Book piracy continues to emerge, ironically this cannot be stopped by law enforcement officials.

This problem is not just a matter of morality from pirates and consumers who prefer to buy pirated books over original books. There is a system and a large industry that perpetuates book piracy, and for some reason the applicable legal system has not been able to overcome it ('[Ancaman Serius Pembajakan Buku](#)', 2020). Public in this case can be divided into two types, Firstly, they do not know that what they have done violates the rights of others. Second, the type who knows that the actions they have done violate the rights of others, but still buy the pirated books.

Public Relations of the Indonesian Publishers Association Arys Hilman, stated that currently there are still many electronic system providers in e-marketplaces who ignore the existence of merchants selling pirated books. Many sellers openly sell pirated books, even thousands of books. This indicates that the piracy of intellectual works has become an industry in Indonesia. Even the organizers of the electronic system seem to let it go because there are still many sellers with pirated goods ([Widyanuratikah, 2019](#)). The convoluted process must be passed by the creator or copyright holder if they complain about problems regarding their books being pirated and freely traded on e-marketplaces. The price of pirated books on e-marketplaces is only a quarter of the price of the original books.

In the practice of law enforcement in the field of copyright in Indonesia, so far there have not been encouraging results. The cases of book piracy are increasing day by day and there is no legal settlement. This results in economic losses for authors and book publishers. The energy, time, and costs incurred by the author to produce a book copyright are not appreciated by the piracy of his work.

The ability to write is not owned by everyone, it is appropriate for the writers to get legal protection and their rights economically from the books that they produce. It is very pity to see from the government's incessant promotion of the literacy spirit in the Indonesian people, but there is no attention to the fate of the book authors whose works have been hijacked by irresponsible people.

Copyright infringement is not a new thing in Indonesia, ranging from minor copyright infringement (photocopying without the author's permission), to serious violations of duplicating, and reselling. This occurs precisely in the midst of increasing national development implementation activities, especially in the fields of science, art and literature. This copyright infringement has reached a dangerous level and can damage the order of people's lives in general and the interest to create in particular ([Hutagalung, 2012](#)). If this is allowed, it will have an impact on the death of the writer's creativity, because the results of his work and efforts are not appreciated. The culture of buying pirated books that is left and continues to grow is not impossible to destroy civilization.

METHOD

The method used in this study was normative juridical research. According to Prof. Peter M., legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. Normative legal research is commonly referred to as researching the law in its meaning as law in books. Normative legal research interprets prescriptively about law as an ideal value system, law as a conceptual system, and law as a positive legal system. Legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems at hand ([Qamar et al., 2017](#)).

DISCUSSION

Legal Protection for Copyright Holders for Selling Pirated Books on the E-Marketplace Platform

Transactions through e-marketplaces are in great demand today, because the

transaction process can be done online. Certainly, in terms of time it is very efficient, and the choice of merchants from various kinds of goods and services needed is available in large quantities in one place. E-marketplace is a virtual market where sellers and buyers meet and conduct various types of transactions. Transactions in the internet world are defined as e-commerce. E-commerce has several characteristics, namely the internet is an intermediary medium to integrate business processes both sales, purchases, inventory, and ordering (Heriyanto, Wibowo, & Setiawan, 2016).

The process of buying and selling transactions in e-marketplaces uses the principles of agreement in article 1233 of the Civil Law: "every agreement is born either by agreement or by law". Then in Article 1320 of the Civil Law: "The conditions for a valid agreement must consist of: agreeing those who bind themselves, the ability to make an engagement, a certain thing, and a lawful cause. Article 25 of Law Number 11 of 2008 concerning on Information and Electronic Transactions states, "Electronic information and/or electronic documents compiled into intellectual works, internet sites, and intellectual works contained in them are protected as Intellectual Property Rights under the provisions of the Laws and Regulations - invitation". Violations of intellectual property rights, especially copyrights, are currently found in many online transaction processes in e-marketplaces. There are so many works of copyrighted books that are the result of piracy which are sold freely at very cheap prices. Copyright as intellectual property has moral rights and economic rights that should be enjoyed by the creator of the copyrighted work of the book, but there are still many people who are not responsible and take the rights of others by selling pirated books for profit.

Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of the legislation. Unlike other intellectual property rights, copyright is born when a work created by the creator. Since then, there has also been recognition of copyright. So, the framework of copyright protection is automatic and the registration agency for copyright is the initial proof of ownership of the rights of the creator. Registration is not a must, because without being registered copyright already exists, is recognized and protected. However, it will be very difficult to prove the existence of copyright, especially with copyrighted works that are not published by the creator and then recognized by others as the copyrighted work. For this reason, the creator should register his copyrighted work, as proof of ownership of a copyrighted work.

In Black's Law Dictionary it says:

as a noun, and taken in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principle of morals; a power privilege or immunity guaranteed under constitution, statutes or decisional law or claimed as a result of long usage; A legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act....

Exclusive Right means right to exclude other for certain of time and take into account the limitation (Jened, 2014).

Rights are legally enforceable demands from one person against another party that compel the other party to act or not act (according to applicable law). Exclusive right is the right to exclude other parties within a certain period of time taking into account the applicable restrictions. Mertokusumo (1989) stated that, "rights are interests that are protected by law. Interests are individual or group demands that are expected to be fulfilled (Mertokusumo, 1989). Therefore, everyone is obliged to respect and not violate the moral rights and economic rights of the creator or copyright holder.

Piracy is the illegal duplication of creations and/or related rights products and the broad distribution of the goods resulting from the reproduction in order to obtain economic benefits (Article 1 number 23 of Law Number 28 of 2014 concerning Copyright). As stated in Article 40 paragraph 1 letter (a) of the Copyright Law, books are protected creations, so the act of piracy is a violation of the law. IPR protection which is a proprietary system is a reward for the expression of personality or an incentive for the creator for his sacrifice in producing intellectual creations that have significant financial implications.

Legal Efforts That Can Be Taken by Copyright Holders Against Selling Pirated Books on the E-Marketplace Platform

Efforts that can be made by creators or copyright holders against the existence of merchants in an e-marketplace platform that sell pirated books are to report the matter to the organizer or platform provider. Platform providers should provide reporting tools that can be used to submit complaints about prohibited content, in this case violations of intellectual property rights, then follow up on complaints or reporting on content.

In article 10 of Law Number 28 of 2014 concerning Copyright it is stated, "the manager of a trading place is prohibited from allowing the sale and/or reproduction of goods resulting from copyright infringement and/or related rights in the trading place they manage". Referring to the article, the organizer or platform provider has the obligation to take firm action against the seller or merchant who commits an unlawful act, in this case selling pirated goods.

Misuse committed by the account owner and/or uploader can harm the platform provider, so that the platform provider can be perceived as being involved in such unlawful acts. This perception will become a scourge for platform providers if it is not placed in the right position, so that it can affect the continuity of its service business.

Based on the Circular Letter of the Minister of Communication and Information Number 5 of 2016, dated December 30, 2016 concerning Limitations and Responsibilities of Platform Providers and Traders (Merchant) Trading Through Electronic Systems (Electronic Commerce) in the Form of User Generated Content, it is stated that goods and/or services containing Content that violates intellectual property rights is content that is prohibited from being traded by merchants.

Based on article 15 of the ITE Law, the platform provider as the provider of the electronic system is responsible for the operation of the electronic system, namely by providing reliable and safe electronic systems and being responsible for the proper operation of the electronic system. The liability provisions do not apply, in the event that it can be proven that the occurrence of coercive circumstances, errors, and/or negligence on the part of the user of the electronic system can be proven.

In Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions:

Article 5 paragraph (1) states, "Electronic system operators are required to ensure that their electronic system does not contain electronic information and/or electronic documents that are prohibited in accordance with the provisions of the legislation".

Article 5 paragraph (2) states, "Electronic system operators must ensure that their electronic system does not facilitate the dissemination of electronic information and/or electronic documents that are prohibited in accordance with the provisions of the legislation". This also mentions the role of the government to prevent the dissemination and the use of electronic information and/or electronic documents that have prohibited contents in accordance with the provisions of laws and regulations, namely by cutting off access and instruct the electronic system operator to terminate access.

The definition of private sphere electronic system operator, hereinafter referred to as private sphere PSE in the Regulation of the Minister of Communication and Information Technology Number 5 of 2020 concerning Private Scope Electronic System Operators (PSE), is the implementation of electronic systems by people, business entities, and the public. For private sector electronic system operators who do not carry out the obligations as stipulated in article 9 paragraph (3), where PSE is obliged to ensure that the electronic system does not contain or facilitate the dissemination of prohibited electronic information and/or electronic documents, access to the electronic system will be cut off. (access blocking). This PP also mentions the obligation of PSE to provide reporting facilities, provide responses to such complaints, conduct independent inspections and/or request verification of complaints and/or reports to the Minister or related Ministries and Institutions, provide notification to users of the electronic system regarding reports against information and/or electronic documents uploaded by electronic system users, rejecting complaints or reports if the reported electronic information or documents are not prohibited electronic

information or documents. For private sector PSEs who do not fulfill these obligations, access to the electronic system will be cut off. PSE private scope of user generated content can be released from legal responsibility if it has carried out these obligations and terminated access to prohibited information and/or electronic documents.

Requests for termination of access to prohibited information and/or electronic documents may be submitted by the public, ministries or agencies, law enforcement officers, and judicial institutions. The application is submitted through the website and/or application, non-electronic mail and electronic mail (electronic mail). PSE ordered by the Minister to terminate access to prohibited information and/or electronic documents, must implement it no later than 1x 24 hours after the order for termination of access is received. For PSEs who do not carry out the order to terminate access, they will be subject to administrative sanctions in the form of fines, the amount of which is in accordance with the provisions of the laws and regulations regarding non-tax state revenues. Then for PSEs who do not terminate access and pay fines, the Minister may terminate access or order Internet Service Providers to terminate access to their electronic systems.

Article 55 of the Copyright Law regulates how to report to merchants selling pirated goods, it is stated that anyone who knows of copyright infringement in the electronic system can report it to the minister. In the event that sufficient evidence is found, the minister in charge of governmental affairs in the field of telecommunications and information technology will close part or all of the content that violates copyright in the electronic system or render the services of the electronic system inaccessible. In the event that the internet site closure is carried out as a whole within 14 (fourteen) days after the closure, the minister is obliged to request a court order.

Settlement of copyright disputes can be done through alternative dispute resolution, arbitration, or commercial courts, besides the commercial court there is no other court authorized to handle copyright dispute resolution. The creator or copyright holder has the right to file a claim for compensation to the commercial court for copyright infringement. The right to file a civil lawsuit for copyright infringement does not reduce the author's right to criminally prosecute.

At the request of the aggrieved party for copyright infringement, the commercial court may issue a provisional decision. Prevent the entry of goods suspected of being the result of copyright infringement into trade routes, withdraw from circulation, confiscate and store as evidence relating to copyright infringement, secure evidence and stop infringement in order to prevent greater losses.

As a last resort, if the civil lawsuit filed does not get satisfactory results, the creator or copyright holder can take a criminal prosecution.

Article 113 paragraph (4) of the Copyright Law states: "Anyone who fulfills the elements as referred to in Article 9 paragraph (3) which is committed in the form of piracy, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine a maximum of Rp.4,000,000,000.00 (four billion rupiah)".

Article 114 of the Copyright Law states: "every person who manages a trading place in all its forms who knowingly and knowingly allows the sale and/or reproduction of goods resulting from copyright infringement and/or related rights in the trading place he manages as referred to in article 10, shall be sentenced to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)".

CONCLUSION

The form of legal protection provided by the State of Indonesia to the creator or copyright holder in cases of book piracy through the electronic system is to regulate it into several laws and regulations. Authors or copyright holders whose books are pirated and then traded on e-marketplaces can submit reports or complaints to the electronic system operator (PSE). The PSE party is obliged to follow up on the incoming report or complaint. The relevant minister may order the PSE to terminate access to merchants who commit such violations. If the PSE does not carry out its obligations as ordered by law, it can be subject to administrative sanctions, fines or even criminal prosecution. Dispute resolution

can be done by arbitration or through filing a civil lawsuit to the commercial court. The last resort can be taken by filing a criminal lawsuit. However, in the rapid development of the world of e-commerce today, which is followed by the development of types of unlawful acts in the electronic system, the urgency of the formation of laws that specifically regulate e-commerce is very much needed in Indonesia. Adequate law enforcement procedures should be available in national law, which is expected to be able to effectively fight Intellectual Property Rights violations that occur in commerce through electronic systems and to prevent further violations in the future.

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