



JURIDICAL REVIEW OF THE PRINCIPLE OF JUSTICE IN THE PROTECTION OF COPYRIGHT OWNERSHIP FOR WORKS CREATED IN COURSE OF PUBLIC SERVICE RELATIONS ACCORDING TO LAW NUMBER 28 OF 2014 ON COPYRIGHT DAN ITS COMPARISON WITH COPYRIGHT REGULATIONS IN FRANCE AND GERMANY

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ABSTRACT

The regulation of copyright ownership of works created in Public Service Relations, as stated in Article 35 of the Copyright Law, indicates an injustice in the protection of copyright ownership for creators. This research aims to examine the implementation of the principle of justice in copyright ownership of works created in Public Service Relations and to compare this with the regulations in Germany and France. This study employs a comparative normative juridical approach with a descriptive-analytical research specification. Data collection is conducted through literature studies. The method of analysis used is descriptive-analytical. The results show that the regulation in Article 35 of the Copyright Law lacks elements of justice for creators in Public Service Relations. This is due to the difference in recognition given to creators of works made in Public Service Relations compared to works made in employment relationships. Compared to the regulations in Germany and France, the regulation of copyright ownership for "works made for hire" in Indonesia does not yet provide adequate protection for creators.

Keywords: copyright; ownership; public service relations.

I. INTRODUCTION

The evolution of society has expanded the definition of human rights beyond just the right to life and the right to freedom. In this era, people have become aware that the blessings of God Almighty are not limited to the right to life and the right to freedom. According to John Locke in his book "Two Treatises on Civil Government," he argues that "the right to life, the right to freedom and liberty, the right to property, and the right to possess something are natural rights inherent in every human being."¹ Based on John Locke's perspective, it is understood that the right to property or ownership of something is a natural or fundamental human right.

Ownership is not limited to tangible objects; ownership of intangible objects is also granted protection. In Indonesia, the ownership of intangible assets, including Intellectual Property, is protected by the constitution. This is stated in Article 28C paragraph (1) of the 1945 Constitution, which mentions that every person has the right to develop themselves through the fulfillment of their basic needs, the right to education, and the right to benefit from science and technology, arts, and culture, in order to improve their quality of life and for the welfare of humanity.² In this regulation, the protection of

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¹ Andi Zahidah Husain, dkk, Perlindungan HAKI Dalam Pandangan Filsafat Sebagai Hak Alamiah Berdasarkan pada teori John Locke, *Praxis: Jurnal Filsafat Terapan*, Vol 1, No.1, 2023, p. 3

² Article 28C paragraph (1) of the 1945 Republik Indonesia Constitution.

Intellectual Property rights plays a crucial role in improving a person's quality of life, and it is hoped that these Intellectual Property rights will contribute to societal welfare.

Philosophically, the rationale for legal protection of individuals over their creations or intellectual property resulting from their intellectual efforts is rooted in the dominance of natural law theory, which emphasizes human factors and the use of reason.³ Thomas Aquinas stated that natural law is part of the essence of life, and through natural law, humans participate as rational (intelligent) beings. Based on this thinking, it can be understood that rational beings can produce creations and works using human intellectual capabilities. Therefore, the individual who produces them naturally acquires ownership rights (natural acquisition).⁴

Intellectual Property Rights are rights guaranteed by the state to provide legal protection for human thoughts or ideas that result in creations that are ultimately beneficial due to their value and utility. Intellectual Property Rights are divided into several regimes, one of which is Copyright. Copyright is an exclusive right over a creation. According to Article 1 Paragraph (1) of Law No. 28 of 2014 on Copyright, Copyright is defined as "the exclusive right of a creator that arises automatically based on the declarative principle once a creation is manifested in a tangible form, without prejudice to restrictions in accordance with the provisions of laws and regulations."⁵

In Indonesia, the regulation of protection for a creation is outlined in Law No. 28 of 2014 on Copyright. The protection provided includes granting Exclusive Rights to the creator or copyright holder over a creation. Exclusive Rights in copyright are divided into two categories: moral rights and economic rights. Moral Rights are rights that are permanently attached to the creator and cannot be transferred to another person or party.⁶ If the creator passes away, the moral rights or the execution of these moral rights can be transferred through a will or other means. Economic Rights are the rights to gain benefits from exploiting the creation in economic terms. Economic rights can be transferred to others.

One of the phenomena related to copyright ownership lies in the difference in recognition between creations made in the course of employment and those made in official duties. According to Article 36 of the Copyright Law, in an employment relationship or when someone commissions another person to create a work, if not otherwise agreed, the creator of the work is naturally the person who made it. However, in the context of official duties, which can be illustrated as the employment relationship between a government institution and a civil servant, a civil servant who creates a work intended for the government does not naturally become the creator of that work. This is stipulated in Article 35 paragraph (1) of the Copyright Law, which states, "Unless otherwise agreed, the copyright holder of a work created by a creator in the course of official duties, the government institution is deemed to be the creator."⁷ This article explains that if a person creates a work while bound by official duties, the government institution where the work is created is considered the creator and owns the rights to the work.

When examining copyright regulations in other countries, such as France, the country's copyright laws do not distinguish between works created by private employees and those created by civil servants. A work created based on a relationship between an employer and an employee or between a government

³ Hendra Tanu Atmadja, *Hak Cipta Musik atau Lagu*, Jakarta: UI Press, 2003, p. 19.

⁴ Taufik H. Simatupang, *Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual Dalam Perspektif Negara Hukum*, *Jurnal Ham*, Vol. 12, No. 1, 2021., p. 117.

⁵ Article 1 Paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

⁶ Eddy Damian, *Hukum Hak Cipta Edisi Kedua Cetakan ke-3*, Bandung: Alumni, 2015, p. 118.

⁷ Article 35 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

institution and a civil servant is considered an employment relationship. According to the France Intellectual Property Code, if a work is created within an employment relationship, the creator is the owner of the rights to the work, unless otherwise agreed.⁸ Furthermore, in German copyright regulations, only the creation of computer programs within an employment relationship is specifically regulated. If a computer program is created by an employee, the copyright owner is the employer.⁹ Other types of works created within an employment relationship are not specifically regulated, leading to the assumption that the creator of the work is the owner.

Ownership recognition is crucial in the context of a creation because possessing copyright allows an individual to exploit the creation and derive economic value from it. This aligns with the Reward Theory, which posits that legal protection for creators is intended to enable them to utilize their creations for economic gain, thereby providing a livelihood for the creator.

The difference in ownership recognition between creations made in the course of employment and those made in official duties is inconsistent with the principle of justice, as it leads to unequal recognition for different parties. Article 28D paragraph (1) of the Constitution states, "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law." The ownership recognition in official duties granted to the employer or government institution also indicates that this regulation does not prioritize natural ownership, which is protected as a Human Right. Furthermore, according to the Principle of Alter Ego, ownership of a creation is inviolable. This principle emphasizes the high regard for the creator and their creation, and it is inherently linked to the creator. Additionally, Eddy Damian argues that intellectual property, which arises from an individual's intellectual capabilities, is a manifestation of one's alter ego, reflecting their personality or the embodiment of their sense, will, and reasoning qualities.¹⁰ The explanation above demonstrates that the regulation concerning copyright ownership of works created in official duties has a basis for being reconsidered.

Based on the background presented, the issues that the author will address in this research are as follows: How is the Principle of Justice in Copyright Ownership of Works Created in Public Service Relationships implemented according to Law No. 28 of 2014 on Copyright?; How is the protection of Copyright Ownership of works created in Public Service Relationships regulated under Law No. 28 of 2014 on Copyright, and how does it compare to the copyright regulations in Germany and France?.

II. RESEARCH METHODS

This research employs a legal research method with a normative juridical approach, focusing on the study of legal doctrines or principles.¹¹ In normative juridical research, the subject of study is literature or secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials. Additionally, this research also utilizes a comparative approach, where the regulations of one country are compared with those of other countries that have similar scopes, and the comparison must involve more than one country.¹²

⁸ *France Intellectual Property Code Art. L 111-1*, diakses melalui <https://www.wipo.int/wipolex/en/legislation/details/21533>, on March 22, 2024.

⁹ *Act on Copyright and related Rights, Section 69b*, diakses melalui <https://www.wipo.int/wipolex/en/text/589429>, on March 22, 2024.

¹⁰ Eddy Damian, *Op.Cit.*, p. 44.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2009, p. 24.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana, 2010, p. 132-133

III. DISCUSSION

Implementation of the Principle of Justice in Copyright Ownership of Works Created in Public Service Relationships under Law No. 28 of 2014 on Copyright

Justice is a relative concept, and each individual may interpret justice differently based on their situation, conditions, or even their place of residence. In Indonesia, justice is reflected in the state ideology, Pancasila, which in its Second Principle states "Just and civilized humanity" and in its Fifth Principle states "Social justice for all Indonesian people." One aspect of applying the concept of justice is in ownership. According to John Locke, property or ownership is a natural right that arises automatically, thus every person possesses it.¹³ In contrast, ownership under the Civil Code (KUHPerdata) is defined as a right to freely enjoy the benefits of an object, with the holder having full sovereignty over it.¹⁴ Based on this explanation, ownership is a natural right that grants an individual complete control over it.

The emergence of copyright protection outlined in Law No. 28 of 2014 on Copyright is a result of applying the principle of justice within Intellectual Property rights. This principle dictates that a creator, using their intellectual capabilities, should receive compensation, both material and non-material, such as the security and recognition of their work.¹⁵ Article 1 paragraph (1) of the Copyright Law states that copyright is an exclusive right of the creator that arises automatically based on the declarative principle once a creation is manifested in a tangible form. The law provides this protection for the benefit of the creator, granting them the authority to act in their interest, known as rights. Each right under the law has a title, which is a specific event that justifies the attachment of the right to its owner.

In line with the principle of justice in intellectual property rights, Recovery Theory and Incentive Theory, as discussed by Robert M. Sherwood, emphasize that protection for creators is warranted because they have invested time, resources, and effort into producing their intellectual work. According to these theories, creators should be able to recover what they have invested and receive incentives or rewards for their work. This not only compensates them for their efforts but also encourages further creativity, leading to the development of new creations.¹⁶

Copyright itself is an intangible asset. This is stated in Article 16 paragraph (1) of Law No. 28 of 2014, which mentions that "Copyright is an intangible movable property."¹⁷ By recognizing copyright as a type of property, it is considered a form of ownership. Ownership of copyright comprises exclusive rights, including moral rights and economic rights. The Reward Theory, as explained by Robert M. Sherwood, asserts that recognition of the work produced by the creator is necessary so that the creator receives appropriate recognition and rewards.¹⁸ Therefore, ownership of copyright can be seen as a form of acknowledgment of the creator's efforts in producing a work.

¹³ Andi Zahidah Husain, et al, *Op.Cit.*, p. 3.

¹⁴ Article 570 Civil Code of the Republic Indonesia

¹⁵ Ojita Aziziyah, Prinsip Treatment Hak Kekayaan Intelektual Dalam Pelanggaran Merek Asing Menurut Hukum Internasional, *Sumatera Journal of International Law*. p. 5

¹⁶ Zahra Cintana, dkk, Implementasi Asas Alter Ego, Teori Personality dan Teori Labour Terkait Kepemilikan Desain Industri Oleh ASN Di Indonesia, *Jurnal Humani*, Volume 12 No.2, 2022, p. 244.

¹⁷ Article 16 Paragraph (1) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

¹⁸ Ranti Fauza Mayana dan Tisni Santika, *Hukum Merek Perkembangan Aktual Pelindungan Merek dalam Konteks Ekonomi Kreatif di Era Disrupsi Digital*, Bandung, PT Refika Aditama, 2021., p. 6.

According to the Copyright Law, copyright ownership can only be acquired in two ways: by creating a work or by transferring the copyright from the creator or previous copyright holder. The procedure for the transfer of copyright is regulated in Article 16, Paragraph (2), which states that:¹⁹

Copyright can be transferred or assigned, in whole or in part, through:

- (a) Inheritance;
- (b) Grant;
- (c) Endowment;
- (d) Bequest;
- (e) Written agreement; or
- (f) Other legal means as permitted under the provisions of the legislation.

The ownership of copyright between the creator and the copyright holder differs, where a creator who is also the copyright holder will possess both moral and economic rights, whereas a copyright holder will only have economic rights. This distinction arises because the transfer of copyright applies only to economic rights, which can be transferred in part or in whole. This regulation is outlined in Article 5 of the Copyright Law, which states that moral rights are inherent and permanently attached to the creator and cannot be transferred to anyone, except in the exercise of moral rights. Consequently, a copyright holder with economic rights over a work has limitations, such as not being able to alter the work.²⁰

Article 35 of the Copyright Law governs copyright over works created within the scope of employment. The article states:

"Unless otherwise agreed, the copyright holder of a work created by a creator within the scope of employment is considered to be the government institution."²¹

This article explains that the recognition of copyright ownership for works created within the scope of employment will be granted to the government institution under which the creator is employed. However, if previously agreed otherwise, the copyright ownership for works created within the scope of employment can be granted to the creator.

The regulation in Article 35, which grants recognition as the creator to the government institution, does not align with the acquisition of copyright ownership, where ownership can only be obtained by creating something or by receiving a transfer from the creator or previous copyright holder. According to the definition of "creator" in Article 1, paragraph (2) of the Copyright Law, a creator is someone or a group of people who produce a work that is distinctive and personal.²² Furthermore, referring to the Alter Ego Principle, a creation is essentially a reflection of the creator's personality, as it embodies the creator's emotions, intellect, and reasoning. Therefore, a government institution or agency cannot be considered a creator, as it cannot embody the element of 'personal identity'.²³

The regulation in Article 36 of the Copyright Law differs from what is stated in Article 35. It mentions that:

"Unless otherwise agreed, the creator and the copyright holder of a work created within the scope of employment or based on commission is the party who creates the work."²⁴

¹⁹ Article 16 Paragraph 2 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

²⁰ Article 5 section c Law of the Republic Indonesia Number 28 of 2014 on Copyrights

²¹ Article 35 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

²² Article 1 Paragraph (2) Law of the Republic Indonesia Number 28 of 2014 on Copyrights

²³ Eddy Damian, *Op.Cit.*, p. 44.

²⁴ Article 36 Law of the Republic Indonesia Number 28 of 2014 on Copyrights

Article 36 grants copyright recognition to the creator, aligning with the Reward Theory, which asserts that creators deserve recognition and rewards, such as compensation, for their work.²⁵ Employers or those commissioning works created within the scope of employment can become copyright holders through the transfer of copyright, as reflected in the phrase "unless otherwise agreed." This provision is consistent with the definition of a copyright holder in Article 1, paragraph (4), which states that a copyright holder is the creator as the owner of the copyright, the party who receives the right from the creator, or another party who further receives the right from the previous copyright holder.

Essentially, a public service relationship (*hubungan dinas*) is an employment relationship between state officials and their institution. Logemann further explains that this relationship involves an element of dedication to comply with orders from the institution they serve²⁶ In contrast, an employment relationship (*hubungan kerja*) is the relationship between a worker and an employer based on an agreement that includes elements of work, wages, and orders. The clear distinction between a service relationship and an employment relationship lies in "who assigns the work" and the element of dedication, which is unique to the service relationship.

With this explanation, the recognition of creators for works produced in service relationships and employment relationships should be equivalent. Both civil servants and private sector employees should be granted equal recognition of copyright ownership, reflecting the concept of justice in both numerical and proportional equality as described by Aristotle. Numerical equality suggests that justice treats every individual as an equal entity, regardless of their actions or contributions.²⁷ In contrast, proportional equality emphasizes that rewards should be given based on what one deserves according to their achievements. In the proportional concept, individuals are not viewed as equal entities directly but are assessed based on their efforts and contributions in specific matters.²⁸

Every citizen is entitled to justice under the law, and equality before the law is a tangible form of that justice. In the context of copyright ownership for works created in a service relationship, justice can be assessed based on Article 28D, paragraph (1) of the 1945 Constitution, which states that "everyone has the right to recognition, guarantees, protection, and legal certainty that is fair as well as equal treatment before the law."²⁹ This article reinforces Article 27, paragraph (1) of the 1945 Constitution, which states that "all citizens are equal before the law and the government and must uphold the law and government without exception."³⁰ The equality before the law mentioned in these articles ensures that every individual receives equal recognition, has guaranteed personal rights, and is treated equally and fairly under the law. This emphasizes that there should be no discrimination in the recognition of copyright ownership, whether for works created in a service relationship or in other contexts.³¹

The concept of numerical justice according to Aristotle and the principles of justice outlined in Article 27, paragraph (1) and Article 28D, paragraph (1) of the 1945 Constitution share a common theme of recognizing individuals. Every individual should have equal recognition and treatment. Therefore, the difference in recognition between creators of works made in a service relationship and

²⁵ Ranti Fauza Mayana dan Tisni Santika, *Op.Cit.*, p. 6.

²⁶ Sri Hartini, dkk, *Hukum Kepegawaian di Indonesia*, Jakarta, Sinar Grafika, 2014, p. 15.

²⁷ Hyronimus Rheti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme)*, Cetakan. Kelima, Universitas Atma Jaya, Yogyakarta, 2015, p. 241.

²⁸ *Ibid.*

²⁹ Article 28D Paragraph (1) of the 1945 Republik Indoensia Constitution

³⁰ Article 27 Paragraph (1) of the 1945 Republik Indoensia Constitution

³¹ Mufti Hakim, Penegakan Hukum dan Implementasi Pasal 27 Ayat (1) Undang-undang Dasar 1945 tentang Persamaan Kedudukan di Hadapan Hukum, *Prosiding Konferensi Nasional Kewarganegaraan III*, 2017, p. 355.

those made in an employment relationship does not align with the concept of justice. Civil servants and private employees are essentially equal and should receive equal recognition under the law. Since both civil servants and private employees invest the same effort in creating works, recognition as creators should also be granted to those who create works in a service relationship.

Protection of Copyright Ownership for Works Created in the Context of Public Service Relationships Based on Law Number 28 of 2014 on Copyright and Its Comparison with Copyright Regulations in Germany and France

A human's intellectual creation, once materialized to have value and utility, is granted a right as a form of protection, known as Intellectual Property Rights.³² Protection of intellectual property began in advanced European countries, addressing the concept of "absolute ownership," a legacy of Roman legal systems.³³ The theory of intellectual property protection is greatly influenced by John Locke's ideas on property rights. John Locke explained that a person's ownership of their intellectual creations exists from the moment they are born. According to Locke, property rights extend beyond tangible objects to include abstract or intangible entities produced by human thought.

The concept of intellectual property ownership aligns with Locke's idea that every person owns themselves. For Locke, no one has the right to claim ownership over another person's property, including their physical work, labor, and sensory efforts. This means that each individual is entitled to the full potential of their own being and the results of their own work. Therefore, everyone has the right to own what is created through their own intellect, including thoughts, ideas, or inventions. Such intellectual creations grant the creator ownership, which ultimately allows them to benefit from their efforts.

The concept of intellectual property ownership as previously explained aligns with the provisions of Article 28C, Paragraph (1) of the 1945 Constitution of Indonesia, which states:³⁴

"Everyone has the right to develop themselves through the fulfillment of their basic needs, to receive education, and to obtain benefits from science and technology, art, and culture, in order to enhance their quality of life and for the welfare of humanity."

The content of this article reflects the protection of human rights, where everyone is entitled to benefit from what they have created through their intellectual efforts. Furthermore, the Universal Declaration of Human Rights, which addresses intellectual property rights, states in Article 27, Paragraph (2):³⁵

"Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which they are the author."

The 1945 Constitution of Indonesia, Article 1, Paragraph (3) states that "The State of Indonesia is a state based on law," indicating that Indonesia, as a rule-of-law state, has an obligation to protect the implementation of human rights. This is further illustrated in the Constitution of Indonesia, specifically in Article 28A of the 1945 Constitution, which states: "Every person has the right to live and the right to defend their life and existence."

³² Andi Zahidah Husain, dkk. *Op.Cit.*, p. 7.

³³ Trisno Raharjo, *Kebijakan Legislatif dalam Pengaturan Hak Kekayaan Intelektual*, Yogyakarta, Pencil Komunika, 2006., p. 17.

³⁴ Article 28C paragraph (1) of the 1945 Republik Indonesia Constitution

³⁵ Article 27 paragraph (1) of the Universal Declaration of Human Rights

Within the scope of human rights protection in Indonesia, intellectual property is classified as property rights. Therefore, intellectual property is a right that cannot be arbitrarily taken away by any party. One form of protection for intellectual property is copyright, which is governed by Law No. 28 of 2014 on Copyright. Article 1, Paragraph (1) of this Law states that copyright is the exclusive right of the creator that arises automatically based on the declarative principle once a creation is embodied in a tangible form. The exclusive right granted to the creator includes both moral rights and economic rights.

There are two legal principles inherent in copyright: the moral principle and the economic principle. Copyright inherits the principle of personal rights from property law, which is then transformed into moral rights.³⁶ Historically, this principle was only known within the family of continental law systems in Europe. In contrast, the economic principle is more widely recognized within the Anglo-Saxon legal system or Common Law.³⁷ Moral rights are considered a characteristic of property rights associated with copyright in various countries, as moral rights are part of Natural Rights, which are human rights. With moral rights being a Natural Right, it can be said that moral rights have a higher standing than economic rights.

The principle of moral rights in copyright, known as moral rights, is outlined in Article 6 of the Berne Convention of 1928, which states:³⁸

“Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.”

The provisions of the Berne Convention encompass the right to claim authorship, the right to refuse any distortion of the work, mutilation, modification, or derogatory actions, all aimed at respecting the honor and reputation of the creator..

The regulation of moral rights in copyright law in countries following the civil law system establishes this principle as paramount, affirming that moral rights are inherent and cannot be relinquished by the creator.³⁹ This perspective is based on John Locke's Labour Theory, which asserts that individuals have a natural right to their own labor. This labor involves discovery, creation, and imbuing personality into something. Additionally, according to Hegel's Theory of Personality, although copyright is not a physical product, a person's image is a "generator of personality." Therefore, a person's personal image must be legally protected, and this protection takes the form of moral rights.⁴⁰

Two countries that explicitly regulate moral rights in copyright are Germany and France. Germany follows a doctrine known as "Droit de retrait et de repentir," or the right to withdraw. This doctrine grants creators the right to withdraw their works from publication for personal reasons. It also introduces the right to revocation, where in a remuneration agreement, a creator can retract the grant of usage rights or cancel their obligations. This right to revoke expires three months after the agreement is sent to the creator. The right of revocation cannot be exercised if both parties have agreed on the type of use and compensation based on the remuneration agreement.⁴¹

France employs the principle of national treatment as the foundation of its copyright regulation. This principle is rooted in natural rights and the natural law doctrine of the Middle Ages, which asserts

³⁶ Bambang Pratama, Prinsip Moral Sebagai Klaim pada Hak Cipta dan Hak untuk Dilupakan (Right to be Forgotten), *Jurnal Ilmu Hukum*, Vol. 2 No. 2, 2016, p. 328.

³⁷ *Ibid.*

³⁸ Article 6 Bern Convention 1928

³⁹ Bambang Pratama, *Op.Cit.*, p. 336.

⁴⁰ *Ibid.*

⁴¹ Section 31a paragraph 1 and 2 Germany Act on Copyright and related Rights.

that copyright is not a grant from others but an inherent right existing naturally within every individual. Natural rights are not created by individuals, states, or other entities but exist from the moment the individual exists. Consequently, French copyright law greatly respects creators, using the term "author's rights" (*Droit d'auteur*) instead of "copyright."⁴²

In France, which adheres to the civil law system, copyright law recognizes and protects moral rights of creators. According to French copyright law, moral rights are perpetual, cannot be revoked, and can be inherited even after the economic rights have been transferred. This is based on the French legal concept that a creation is an extension of the creator's character and personification, which cannot be transferred to another party. In France, moral rights apply to all types of creations, and the creator remains central, holding full rights to the ownership of the creation. The French concept of moral rights is closely related to the human status of the creator, and as a result, French copyright law disregards institutions as creators.⁴³

Germany and France, both civil law countries, place moral rights at the highest level of copyright protection. Indonesia, also a civil law country, shares similar views on moral rights in copyright. The copyright regulations in Indonesia concerning moral rights are outlined in Article 5 of the Copyright Law, which essentially states that moral rights are inherently attached to the creator and cannot be revoked by anyone. Additionally, moral rights are intended to provide respect and protection for the creator's name, reputation, and creation, rather than the economic value of the creation.⁴⁴

Providing protection in the form of moral rights to the creator is crucial because it relates to the ownership of copyright by the creator. Regarding "work made for hire," Germany, France, and Indonesia have different regulations. The regulations on "work made for hire" in Indonesia, Germany, and France are summarized in the table below:

Variable	Indonesia	German	Perancis
Regulation of Copyright Ownership in 'Work Made for Hire	Law No. 28 of 2014 on Copyright (UUHC 2014) Article 35 (1) and Article 36	<i>Germany Act on Copyright and related Rights Section 43</i>	<i>France Intellectual Property Code Art. L 111-1</i>
Copyright Ownership	Article 35 (1): Unless otherwise agreed upon, the Copyright Holder for a Work created by a Creator in an official capacity shall be considered to be the government agency. Article 36: Unless otherwise agreed upon, the Creator and the Copyright Holder for a Work created in an employment relationship or	<i>The provisions of this Subdivision also apply where the author has created the work in the fulfillment of obligations resulting from an employment or service relationship, unless otherwise provided in accordance with the terms or nature of the employment or service relationship.</i>	<i>The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which shall be enforceable against all persons. This right shall include attributes of an intellectual and moral nature as well as</i>

⁴² Haryono, et al., Pengakuan dan Pelindungan Hak Cipta Tinjauan Secara Filosofis dan Teoritis, *Jurnal Ilmiah CIVIS*, Vol. 6, No. 2, 2017., p. 53.

⁴³ *Ibid.*

⁴⁴ Article 5 Law of the Republic Indonesia Number 28 of 2014 on Copyrights.

based on a commission shall be the party who created the Work.

attributes of an economic nature, as determined by Books I and III of this Code. The Existence or conclusion of a contract for hire or of service by the author of a work of the mind shall in no way derogate from the enjoyment of the right afforded by the first paragraph above.

In the regulation of "work made for hire," Indonesian copyright law divides it into two forms: works created within official duties and works created within employment. The regulation of ownership of works under "work made for hire" in Indonesian copyright law differentiates between works made within official duties and those made within employment. For works created within official duties, the authorship recognition is given to the agency or institution where the civil servant is employed, unless otherwise agreed upon. Meanwhile, for works created within employment, the authorship recognition is given to the creator of the work unless otherwise agreed upon beforehand.

In the German Copyright Law or the Germany Act on Copyright and Related Rights (Urheberrechtsgesetz), works created by commission (work made for hire) are not discussed in detail. The German copyright law only addresses computer programs created by commission. According to the German copyright regulation, the authorship and moral rights associated with copyright remain with the creator, while the economic rights are entirely transferred to the employer unless otherwise agreed. This is consistent with the definition of the author in the German copyright law, where Section 7 of the Germany Act on Copyright and Related Rights states:⁴⁵ *"The author is the creator of the work."* In the French Intellectual Property Code, for works created by commission (work made by hire), ownership is directly attributed to the creator of the work. Furthermore, France does not distinguish between employment relationships and official duties.

Indonesian copyright law distinguishes between works created within official duties and works created within employment. This distinction lies in the recognition of authorship, where, in the case of official duties, authorship is attributed to the institution or agency, while in the case of employment, authorship is attributed to the creator of the work. Unlike Indonesian copyright law, the copyright regulations in Germany and France do not differentiate between official duties and employment. In both Germany and France, for "work made for hire," the recognition of authorship is directly attributed to the creator of the work. The difference in recognition between works created within official duties and employment as seen in the Indonesian Copyright Law reflects an unfair disparity in recognition between state officials and private or freelance employees.

Germany and France, which operate under the Civil Law system, place moral rights as the highest rights granted to creators as a form of recognition. Therefore, in the copyright regulations of Germany and France regarding "work made for hire," the recognition of the creator is reflected in the granting of moral rights to the creator of the work. This regulation aligns with the Labour Theory and Personalism

⁴⁵ Section 7 Germany Act on Copyright and related Rights.

Theory, where ownership is given to the creator who infuses a part of their personality into the work. This recognition is also based on the natural rights possessed by the creator of the work.

IV. CONCLUSIONS

The principle of justice in intellectual property rights has been implemented through the protection of copyrights as outlined in Law Number 28 of 2014 on Copyrights. However, in relation to the concept of justice for individuals as stated in the 1945 Constitution, particularly Article 27(1) and Article 28D(1), the Copyright Law has not yet fulfilled this principle. The differentiation in recognition between authors of works created within official duties and those created within employment demonstrates that the concept of justice has not been fully implemented in this regulation.

Indonesia, which follows the same legal system as Germany and France—the Civil Law system—has not yet emphasized moral rights as the primary rights. This is evident from the lack of recognition of civil servants who create works as part of their official duties. The absence of recognition for the creator under these circumstances suggests that the Labour Theory is not reflected in Article 35 of the Copyright Law. Moreover, the recognition of the institution or agency as the author is also inconsistent with the Alter Ego Principle and the Personalism Theory, which state that a work embodies the personality of its creator.

The Indonesian government needs to revise Article 35 of Law Number 28 of 2014 on Copyrights regarding the ownership of works created within official duties, to make it more relevant and aligned with the concept of justice outlined in the Indonesian Constitution. In reviewing this article, it is essential to consider theories relevant to copyright, such as the Reward Theory, Incentive Theory, and Recovery Theory.

Additionally, clearer legal regulations are needed to provide protection in the form of recognition for creators of works within official duties. This should be related to the natural ownership principle found in the Labour Theory. Furthermore, the proper implementation of the alter ego principle is necessary in Article 35 of the Copyright Law, so that the recognition of the author being attributed to institutions or agencies can be reconsidered carefully.

REFERENCES

Books

- Eddy Damian, *Hukum Hak Cipta*, Bandung: P.T. Alumni, 2019
- Hendra Tanu Atmadja, *Hak Cipta Musik atau Lagu*, Jakarta: UI Press, 2003.
- Hyronimus Rhiti, *Filsafat Hukum Edisi Lengkap (Dari Klasik ke Postmodernisme) Cetakan. Kelima*, Yogyakarta: Universitas Atma Jaya, 2015.
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2010.
- Ranti Fauza Mayana & Tisni Santika, *Hukum Merek Perkembangan Aktual Pelindungan Merek dalam Konteks Ekonomi Kreatif di Era Disrupsi Digital*, Bandung: PT Refika Aditama, 2021.
- Sri Hartini, dkk, *Hukum Kepegawaian di Indonesia*, Jakarta: Sinar Grafika, 2014.
- Trisno Raharjo, *Kebijakan Legislatif dalam Pengaturan Hak Kekayaan Intelektual*, Yogyakarta: Pensil Komunika, 2006
- Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2009.

Journals

- Andi Zahidah Husain, et al, “Perlindungan HAKI Dalam Pandangan Filsafat Sebagai Hak Alamiah Berdasarkan Pada teori John Locke”, *Praxis: Jurnal Filsafat Terapan*, Vol 1, No.1., 2023.
- Bambang Pratama, “Prinsip Moral Sebagai Klaim Pada Hak Cipta dan Hak Untuk Dilupakan (Right to be Forgotten)”, *Jurnal Ilmu Hukum*, Vol. 2 No. 2., 2016.
- Haryono, et al., “Pengkakuan dan Pelindungan Hak Cipta Tinjauan Secara Filosofis dan Teoritis”, *Jurnal Ilmiah CIVIS*, Vol. 6, No. 2., 2017.
- Mufti Hakim, “Penegakan Hukum dan Implementasi Pasal 27 Ayat (1) Undang-Undang Dasar 1945 tentang Persamaan Kedudukan di Hadapan Hukum”, *Prosiding Konferensi Nasional Kewarganegaraan III*, 2017
- Ojita Aziziyah, “Prinsip Treatment Hak Kekayaan Intelektual Dalam Pelanggaran Merek Asing Menurut Hukum Internasional”, *Sumatera Journal Of International Law.*, 2021.
- Taufik H. Simatupang, “Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual Dalam Perspektif Negara Hukum”, *Jurnal Ham*, Vol. 12, No. 1., 2021.
- Zahra Cintana, dkk, “Implementasi Asas Alter Ego, Teori Personality dan Teori Labour Terkait Kepemilikan Desain Industri Oleh ASN Di Indonesia”, *Jurnal Humani*, Volume 12 No.2., 2022.

Laws and Regulations

- The 1945 Constitution of Republic Indonesia
- Law of the Republic Indonesia Number 28 of 2014 on Copyrights
- Germany Act on Copyright and related Rights
- France Intellectual Property Code
- Bern Convention 1928
- Civil Code of the Republic Indonesia

Other Sources

- World Intellectual Property Organization, “France Intellectual Property Code”, 2022, <<https://www.wipo.int/wipolex/en/legislation/details/21533>>
- World Intellectual Property Organization, “Germany Act on Copyright and related Rights, 2021, <<https://www.wipo.int/wipolex/en/text/589429>>.