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Appropriate Mediation Mechanism in the Resolution of Copyright Infringements to Achieve Restorative Justice

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Abstract: Copyright creates economic benefits for creators and/or copyrights holders. The digital era provides opportunities for creations to become more famous through available platforms, which then open up monetization opportunities. However, it also leads to a vulnerability to violations, such as the uploading of movies or songs without the permission of the creator and/or copyright holder, which can be enjoyed by anyone without royalties. The draft of Indonesian Criminal Procedure Code, which is planned to be enforced soon, essentially prioritizes the resolution of criminal acts through the application of restorative justice. Indonesian Copyright Law places criminal punishment for copyright infringement that does not constitute piracy as a final attempt (ultimum remedium) by requiring mediation before criminal prosecution if the parties are known to exist and/or are located in Indonesia. Unfortunately, mediation does not cover during ongoing criminal prosecution processes, so that restorative justice, especially compensation for losses incurred by creators and/or copyright holders, is difficult to achieve. This article uses a descriptive-analytical normative legal approach supported by secondary data that collected through literature studies, aiming to find the appropriate mediation mechanism to achieve restorative justice, even if a copyright infringement has entered the prosecution stage. This article concludes that mediation as regulated in Indonesian Copyright Law still finds it difficult to achieve restorative justice. Therefore, it is necessary to formulate legislation on appropriate mediation mechanisms for resolving copyright infringements, both before criminal prosecution are filed and during the prosecution process, so that true restorative justice can be achieved.

Keywords: copyright, mediation, restorative justice

INTRODUCTION

There is no human in this world can fulfil all their needs and maintain their livelihood without interacting socially with other humans. The simplest form of social interaction through production, distribution, and consumption is called economic activity. Economic activities are carried out by individuals in a community for their own welfare and that of their families, as well as by the state for the welfare of its citizens. The increase in economic activity in this era of technological advancement has encouraged rapid growth in the creative industries that produce goods and services. Every creation that contains new creativity and innovation immediately receives copyright protection without requiring registration with the Directorate General of Intellectual Property as an obligation. The issuance of a copyright certificate is merely administrative in nature, serving as proof that the creation has been registered, and not as the basis for the creation of rights. A copyright certificate serves as evidence in the event of a copyright dispute, which can be set aside if other evidence can be provided (Lubis, 2021). This is what makes copyright unique compared to trademarks, patents, industrial designs, and other types of intellectual property.

Copyright provides economic benefits, becoming a source of income for creators and/or copyright holders as creative economic actors through royalties from the use of their creations by other parties (Rongiyati, 2018). When their rights have been violated, creators and/or copyright holders have the right to take legal action, both criminally and civilly, through the courts, arbitration, or other alternative dispute resolution (Hediati & Andini, 2023). If civil legal actions and criminal legal actions are taken simultaneously, civil legal actions shall take precedence.

Restorative justice, which is currently being hotly debated as a new breakthrough in Indonesia's criminal justice system, has been incorporated into the Draft Indonesian Criminal Procedure Code, which is planned to be enacted soon. Restorative justice has also been applied to a limited extent in Law No. 28 of 2014 on Copyright, which places criminal law enforcement as a last resort (*ultimum remedium*). Prosecution of copyright infringements that do not constitute piracy requires mediation before criminal charges are filed if the parties are known to exist and/or are located in Indonesia, with the hope of reaching a settlement. Unfortunately, mediation does not apply after criminal charges have been filed, so the mediation requirement is a separate issue, and will even be futile when the perpetrator and victim only express a desire for an amicable settlement once the case has entered the prosecution stage (Rahmawati & Saputro, 2022). In addition, there is no clarity as to whether mediation refers to mediation regulations carried out within the court system or as an alternative dispute resolution method.

Although there have been many books and articles discussing the application of restorative justice in the field of copyright, none have specifically discussed the mechanism of mediation in copyright infringement cases that have entered the prosecution stage. Therefore, this paper was written with the aim of providing an understanding of the appropriate mediation mechanism in criminal proceedings for copyright infringement, even though it has entered the prosecution stage, as a concrete manifestation of the application of restorative justice. This paper is interesting and very important for the development of legal science in the field of intellectual property, and will be particularly useful for academics and

legal practitioners in the field of intellectual property, such as the author, who carry out their profession in order to achieve true justice for perpetrators, victims, and society.

METHOD

This article uses a normative juridical method, with a descriptive-analytical normative legal approach that describes the facts of the research results. The research uses secondary data collected through a literature study conducted or aimed only at written regulations and other legal materials (Marzuki, 2008), consists of primary legal materials, secondary legal materials, and tertiary legal materials, to obtain information related to the field of study, including ideas, concepts, legal principles, and legal rules specific to mediation and copyright. The data obtained is then recorded, quoted, classified or grouped, documented, summarized, and reviewed based on its nature in accordance with the research needs in order to understand and obtain a clear picture for then formulating the appropriate mediation mechanism related to copyright infringement.

RESULTS AND DISCUSSION

Creators can commercially exploit their creations and license them to other parties to act as copyright holders. Creators and/or copyright holders are protected by law to control the use and distribution of their intellectual works in the fields of science, art, and literature, including displaying, reproducing their creations, and allowing or prohibiting others from using their creations. The availability of digital platforms in the era of information technology advancement provides opportunities for a creation to become famous more quickly, which then opens up monetization opportunities. However, the digital era is also prone to copyright crimes in various forms, such as piracy, reproduction of creations, uploading of films, e-books, or songs on websites without permission from the creator and/or copyright holder, so that anyone can enjoy them without paying royalties.

Copyright infringement is categorized as a complaint offense, meaning that violations of copyright are only processed if there is a complaint from the creator and/or copyright holder, with criminal penalties in the form of fines and imprisonment. However, the fact that copyright infringement cases have traditionally been lengthy and costly to resolve remains a deterrent, so creators and/or copyright holders who feel that their rights have been infringed rarely file complaints and tend to simply ignore the infringement. In fact, the Indonesian criminal justice system, which initially adhered to the paradigm of retributive justice that focused on legitimizing punishment as a means of retaliation against perpetrators, has now developed towards a paradigm of restorative justice that ensures that the entire judicial process runs as it should in order to achieve justice and legal certainty. Restorative justice for copyright infringement is considered to provide more humane justice and have a broader impact, as it focuses on restoration, namely restoration of the moral and material losses suffered by the victim, restoration of the relationship between the victim, the perpetrator, and the community, including the opportunity for the perpetrator to correct their mistakes and be accepted back into the community without discrimination. The success of criminalizing copyright infringement is not only measured by how severe the deterrent effect is on the perpetrator so that they do not repeat their actions and restore the victim's condition to what it was before the infringement occurred, but must also be measured in terms of its effectiveness

as a tool to guarantee the running of the economy through business stability. However, in reality, it is certainly very difficult to satisfy the sense of justice for all parties at once, especially since violations of the moral rights of creators are related to dignity and reputation, which are very difficult to assess in terms of nominal losses.

The requirements and procedures for applying restorative justice must be carried out by legal practitioners with consideration given to, among other things, the subject, object, category, background of the copyright infringement, the consequences or losses suffered by the victim, criminal penalties, social impact, and so on. Mediation between the perpetrator and the victim, which is required before criminal charges are filed, is evidence that Law No. 28 of 2014 on Copyright no longer applies repressive punishment with a rigid retributive justice approach to copyright infringements that are not piracy, if the parties are known to exist and/or are located in Indonesia. However, the provision does not explicitly regulate the legal consequences if mediation is not carried out, so it is unclear whether the copyright infringement complaint is dismissed or proceeds to the next stage.

The term mediation comes from the Latin word “mediare,” which means to be in the middle, referring to the role of a neutral and impartial third party who is tasked with handling and resolving disputes between parties peacefully, thereby producing a solution that is beneficial to both sides (win-win solution) (Triana, 2019). Mediation essentially involves a neutral third party who does not have the authority to make decisions, but only helps the perpetrator and victim who are in dispute to find a solution that is acceptable to both parties. Mediation encourages the resolution of copyright infringement through a persuasive and fair approach, which places the parties on an equal footing and requires them to have the desire to maintain good relations in the future. The mediation process begins with pre-mediation, where the mediator holds separate caucuses with each party. The mediator acts neutrally to facilitate communication between the parties and help find settlement options. The decision to reach an agreement is made by the parties, not by the mediator (Meliala, Purba, & Silaban, 2022).

In some cases, the Ministry of Law of the Republic of Indonesia has become the government agency authorized to act as an independent mediator in cases of copyright infringement that do not involve piracy. In addition, the mediation process can also be mediated by the police who receive complaints, as a discretionary authority regulated in the Circular Letter of the Chief of Police of the Republic of Indonesia Number Pol: B/3022/XXII/2009/SDEOPS Regarding Case Handling Through Alternative Dispute Resolution. In the Constitutional Court hearing of case number 28/PUU-XXIII/2025 and 37/PUU-XXIII/2025, General Director of Intellectual Property, *Ir. Razilu, M.Si., CGCAE.*, explains that, in essence, the primary resolution of copyright infringement disputes is through civil proceedings in commercial courts, arbitration, or mediation conducted officially by bodies recognized by the Government and subject to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Criminal charges can only be filed if civil proceedings fail.

The mediator's authority ends when mediation results in a settlement that then becomes the basis for the dismissal/termination of the lawsuit, or when mediation does not result in a settlement and the copyright infringement reported by the victim proceeds to prosecution. The obligation to undergo mediation, which is only required before criminal charges are filed, can be interpreted as meaning that the opportunity to resolve the matter peacefully

through mediation is closed once the complaint has entered the prosecution stage. A settlement between the perpetrator and the victim through mediation that occurs after a criminal complaint has been filed does not stop the prosecution, but only becomes one of the considerations for reducing the perpetrator's sentence. This fact illustrates that restorative justice in the context of copyright protection has not yet been fully implemented.

Copyright infringement directly causes material/economic losses to creators and/or copyright holders, as well as immaterial losses relating to the moral rights of creators. Therefore, it is highly desirable that all parties involved, including perpetrators, victims, and the community, participate in order to achieve restorative justice that emphasizes resolution and restoration to the original state. Restorative justice does not mean condoning copyright infringement, but rather seeking the best solution so that perpetrators remain responsible for the material and immaterial losses suffered by victims, and the community can accept perpetrators back into their environment.

Mediation is considered the most appropriate mechanism for achieving restorative justice that focuses on strengthening the rights of creators and/or copyright holders. This is the basis for the importance of developing a better mediation mechanism than the one currently in place. Mediation related to copyright infringement does not need to be limited to piracy, because in principle, regardless of the type of infringement, the goal of restorative justice remains the same, namely to provide a deterrent effect while restoring conditions to their original state. If we look closely, many aspects of mediation that are part of the civil court process can actually be applied to the mediation mechanism in criminal law, with specific developments in accordance with the needs of the scope of criminal law and copyright. First, the duration of mediation related to copyright infringement should not be limited to before the filing of a lawsuit, but should be extended until a final and binding decision is reached so that there is a greater chance of reaching a settlement, which needs to be continuously encouraged and initiated by law enforcement officials during the prosecution process. Second, in addition to the Ministry of Law of the Republic of Indonesia and the Police, mediation can also be mediated by certified mediators who have been declared competent in principle. Third, mediation involves an independent appraisal to assess the victim's losses, given that the economic value of a copyright is highly subjective and there is no fixed value ceiling, so a competent appraisal is needed to assess the losses in the context of fairness. Fourth, the involvement of family members or community leaders is necessary to maintain objectivity.

CONCLUSION

Mediation as regulated in Law Number 28 of 2014 concerning Copyright has applied the principle of restorative justice but not fully because mediation is limited to cases before criminal charges are filed. The mediation mechanism in civil cases can be used as a mediation mechanism in the settlement of copyright infringements that are not piracy. Therefore, it is necessary to immediately enact legislation that technically regulates the mediation mechanism in the settlement of all types of copyright infringement, including piracy, which can be implemented both before and after criminal charges are filed, so that true restorative justice can be achieved.

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