

## DIGITAL COPYRIGHTS WORKS PROTECTION: DISCOURSE ON DECLARATIVE PRINCIPLES AND RECORDATION MECHANISM

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<https://doi.org/10.37602/IJREHC.2024.5301>

### ABSTRACT

The impact of development of information and technology in relation to digital works on the internet has indicated a contribute in the digital environment through duplication or copying under the copyright system. Duplication that only intended to read only, and there is permanent as intended to store information itself. Copyright protection on the Internet focuses to any attempt to restrict access and usage of the creation. Considered that violation in all activities that involve copying or making new digital activities either artistic or literary work available to the public without permission (eg, linking, framing, sharing). Indonesia has ensured the protection of copyrighted works, especially in the digital era, by ratifying international treaties related to copyright in the digital era such as the WIPO Copyrights Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), and the Beijing Treaty on Audio-Visual Performance. These three treaties regulate economic rights and moral rights for creators and performers, including those related to music and songs in the digital (internet) era Indonesian Copyright Law has regulations about Copyrights Recordation and Its recordation can be applied by applicant(s) even Creator or the Owner of Copyrights to Directorate General Intellectual Property (Indonesia IP Office). Certificate of Recordation will make easy proved if any dispute happening event takes proceedings either court or non-court settlement. Based on the declarative principle, there is a problem about contradiction between recordation and copyright protection which is published in the internet. This article discusses the existence of copyright recordation regulation that causes its to be breached copyright ownership principles to be gotten protection since that creation first time is publicized (first to publish).

**Keywords:** Digital Copyrights Works, Declarative Principal Doctrine, Recordation Mechanism

### 1.0 BACKGROUNDS

The information and communication technology convergence, which came in the form of an electronic system (digital), in one particular context, communication on the Internet cannot be said to be an announcement, but in the other hand, it can be considered as an act of the announcement. But certainly, all the information in the digital environment are communicated through duplication or copying. There is temporary information duplication that only intended to read-only, and there is a permanent duplication as intended to store information itself.

Meanwhile, various information communicated via the Internet is increasingly diverse due to the development of digital technologies. Artistic and/ or literary works in the form of voice and text, now communicated information includes all possible forms, such as images, data, documents, videos, and so forth. It also resulted that Internet known as multimedia facilities. Subsequently, the Law of the Internet will include the convergence of the legal paradigm of telecommunications, media and information (telecommunications). Many benefits can be provided by the Internet, but there are those who abuse it for self-benefit and might against the law. For example, the distribution of illegal content, which might include the distribution of digital intellectual creations (digital works),<sup>1</sup> including without rights and without permission.

In the intellectual property rights perspective especially in copyright context, an intellectual creation is protected as one's property (a bundle of rights) that includes moral rights and economic rights. To protect the moral rights and economic rights, formally, any duplication or copy by other parties should be done with the permission of the creator, if not then it is a violation (infringements).<sup>2</sup> Therefore, the creator has the right to control the form of duplication and/or announcement to the public. But on the other hand, Internet is a global communications medium that works on the basis of the certainty of technical operation in which each information delivered and accepted between the parties. Communication providers involved not check or control the communicated content, so the responsibility of the communicated content is on the users.

Actually Indonesia has ensured the protection of copyrighted works, especially in the digital era, by ratifying international treaties related to copyright in the digital era such as the WIPO Copyrights Treaty (WCT) through Presidential Decree No. 19 of 1997, the WIPO Performances and Phonograms Treaty (WPPT) through Presidential Decree No. 24 of 2004, and the Beijing Treaty on Audio-Visual Performance through Presidential Decree No. 2 of 2020. These three treaties regulate economic rights and moral rights for creators and performers, including those related to music and songs in the digital (internet) era.

Government of Indonesia has a strategic role in supporting national development and promoting public welfare as mandated by the 1945 Constitution. So, it is reasonable for the state to be involved in providing strict regulations with the principles of balance and justice as well as fully guaranteeing the protection of all kinds of intellectual works in the fields of science, art, and literature. Article 10 of the Copyright Law is a provision that regulates prohibition imposed on managers of places of commerce against allowing the sale and/or duplication of goods resulting from infringement of copyright and/or relevant rights at the places they manage. This norm is intended to realize the value of justice, especially for creators, as an effort to ensure the acquisition of economic rights of the creator and specifically gives

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<sup>1</sup> In general, digital works are any intellectual creations or creations that can be represented in digital form or in other words can be represented by a binary code (0 or 1), including: photos, songs, music, electronic books, databases, computer programs, etc.. Meanwhile, based on the nature of the data is divided into (i) fixed data (eg songs, music, databases and other similar things), and (ii) the dynamic data which is a series of instructions for the operation of a particular function (eg computer program).

<sup>2</sup> In the United States there are several categories of violations, namely: (i) Direct Infringement; (ii) Contributory Infringement; (iii) Vicarious Infringement; and (iv) Inducing Infringement.

responsibility to market manager as managers of places of commerce to oversee the sale, duplication, and transaction of products resulting from copyright infringement.

For Indonesia, the state recognizes and rewards copyrighted works by creating a mechanism for protection of rights with a system for recording works, which in terms of substance, there are several important provisions that are interrelated and can even become strategic instruments in supporting processes and mechanisms for enforcing copyright law. Although in digital developments and its works created and completed are carried out via the internet, while the creation (literary and artistic) works, it is also permissible to get recordation to the government official Directorate General Intellectual Property (DGIP), in which case the mechanism for copyrights recordation in Indonesia is clearly detrimental to the owner of the work or the creator of the original copyright

Actually, the copyrights recordation system will continue with the making of implementing provisions for the administrative mechanisms of the application, inspection, certification and documentation processes. It is considered that the issuance of a certificate in the form of a Copy Recordation Certificate will make it easier to prove in the event of a copyright dispute, be it a case in court or out of court. These provisions for the registration of works are unbalanced and exclude the existence of copyrighted works which are not registered, in other words for works which are not registered it will be more difficult and more time consuming to prove the copyright than works which are registered.

In particular, Indonesia Copyright Law regulates the provisions regarding the copyrights recordation of Works. Recordation of Works can be carried out by the Applicant either by the Author or the Rights Holder. For applications for recordation (application to register) from Abroad, it is required for Foreign Applicants to submit applications for recordation through a proxy, the proxy is a Registered Intellectual Property Rights Consultant at the Directorate General of Intellectual Property Rights (hereinafter referred to as the Directorate General of Intellectual Property Rights/ DGIP).

In fact, universally, based on the provisions of international conventions in the field of copyright, including in the practice of protecting creations of works of art and literature, they do not recognize or require registration of works with certain agencies in a country. A doctrine that is used to protect copyright, that is, a work has received legal protection since the creation was finished, and can be known, heard, seen by other parties (first to publish) which gives rise to ownership of rights for the creator or the right holder. This principle is known as the principle Declarative (Declarative Principal).

In relation with technology in protecting copyrights works, based on Article 53 of Law Number 28 of 2014 concerning Copyright and Related Rights, there are the following provisions:

- 1) *"Creation or Related Rights products that use production facilities and/or data storage based on information technology and/or high technology, must comply with licensing rules and production requirements stipulated by the competent authority"*<sup>3</sup>

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<sup>3</sup> What is meant of "information technology-based and/or high-technology-based data storage and production facilities" include optical discs, servers, cloud computing, secret codes, passwords, barcodes, serial numbers, decryption and encryption technologies. ) used to protect the creation.

- 2) *"Further provisions regarding production facilities and/or data storage based on information technology and/or high technology as referred to in paragraph (1) shall be regulated in a Government Regulation"*

In its development, the problem of copyright protection on the internet also occurs with artistic works from artists, creators, known as NFTs ('non-fungible tokens'), as a digital asset from the development of Marketable Digital Assets, including 'cryptocurrency'. As we know, NFTs ('non-fungible tokens')<sup>4</sup> based on blockchain technology are currently popular in the crypto world. Many people have speculated that when artistic works become valuable, then within the scope of Copyright protection, NFT ('non-fungible token') will become a very valuable asset when there are fluctuations in market value with a system that is quite easy to trade, so the term NFT ('non-fungible token') as a digital asset is fulfilled.

This means that a work is not in the form of ideas or ideas but is a real expression of these ideas or ideas (protected expression of ideas). In a broad sense, the terms of ownership of a work are not determined by the existence of registration, because such work has received protection since it was first announced, however. In particular, in Indonesia, a mechanism for the Registration of Works is organized. In the other hand that Intellectual Property Disputes and Cases, especially Copyright Cases based on or the principle of Originality of Works (copyrights works). The causes of disputes or cases of intellectual property in the field of copyright are due to the following:

- a. Claims/Laws on Copyright Ownership,
- b. Rights of Reproduction matters (Adaptation and/ or Transformation of Creation),
- c. Fixation of Works, Transmission Activities,
- d. Lawsuit for the Cancellation of the Recordation of Works;
- e. Compensation Lawsuit and Criminal Report on the Circulation of Reproduction Products Without Rights;
- f. Copyright License Agreement;
- g. Monetization of Creation.<sup>5</sup>

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<sup>4</sup> NFT ('non-fungible token'):

- The digital assets of the token are unique and distinctive (the result of creativity)
- The token can be authenticated on digital assets
- Token (authentication) that can prove the ownership of people (individuals or institutions)
- Generate benefits for users to own these unique digital assets (NFT).

<sup>5</sup> Tribunnews.com: <https://www.tribunnews.com/seleb/2020/03/31/hakim-tolak-gugatan-cover-lagu-lagi-syantik-rp-95-m-nagaswara-tak-terima-gen-halilintar-bersyukur>

This case started at the end of 2018. At that time, Gen Halilintar covered Siti Badriah's song "Lagi Syantik" on their YouTube account without the permission of the Nagaswara music label.

However, Nagaswara, as the music label that houses singer Siti Badriah, suspects that Gen Halilintar has violated copyright. The lawsuit was registered at the Central Jakarta District Court with number 82/Pdt.Sus-Hak Cipta/2019/PN.Niaga.Jkt.Pst.

The panel of judges at the Central Jakarta Commercial Court rejected Nagaswara's lawsuit regarding the case of alleged copyright infringement by the Gen Halilintar Family.

The impact of technological developments on digital platforms on the internet, including the availability of various copyrighted works in the form of "information" which are then presented to the public (published and reproduced) digitally, for example: books, musical works, films, software on discs (cd, vcd, dvd), then the impact of technological developments from the publication of copyrighted works on the internet, as follows:

- a. Duplication of copyrighted works on the internet;
- b. Unrestricted distribution or distribution of copyrighted works;
- c. Ease of changing and merging other people's copyrighted works;
- d. Claim originality to be a new work;
- e. Trading of products/merchandise (copyrighted) on e-commerce platforms.

A valuable lesson from this is Copyrights of Digital Works Protection: Critical Study On Declarative Principle and Recordation System In Indonesia. Another negative impact regarding current of the development of information technology via the internet with the current copyright system, among others:

- a. It's easy to reproduce (reproduce) copyrighted works without the permission of the creator.
- b. The difficulty of tracing copyright offenders on the internet (if piracy occurs).
- c. Violation of economic rights and moral rights of creators
- d. Damaging the industry of original copyrighted works.

## 2.0 RESEARCH METHOD

This research method is intended for studies that are scientific works which in essence are a means of infrastructure (scientific) for the development of science and technology, so the applied research methodology is adjusted to the main body of knowledge in the field of law.<sup>6</sup> This research is also an analysis process of observing and acting logically, methodically and systematically regarding phenomena, events or empirical facts that occur or exist around us to be reconstructed in order to reveal facts and information that are useful for life,<sup>7</sup> especially for the Intellectual Property Rights (IPR) protection system for relationship between the Recordation of works and the Declarative Principles on copyrights system provisions.

This scientific work is written based on the material collected and analyzed based on data according to the topic to be discussed. As we all know that a research is an effort made by humans to find new things and solve a problem,<sup>8</sup> therefore written of this scientific paper uses an approach in the perspective of national interests, with a multidisciplinary analysis in accordance with the theoretical framework Relationship between the Recordation of works and the Declarative Principles on copyrights system in relation with Copyrights Protection of Digital Works.

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<sup>6</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2012, p. 1.

<sup>7</sup> Abdul Kadir Muhammad, *Law and Legal Research*, (Bandung: PT Citra Aditya Bakti), 2004, p. 2.

<sup>8</sup> Bambang Sunggono, *Method of Legal Research*, (Jakarta: PT Raja Grafindo Persada), 2001, p. 27.

### 3.0 DISCUSSION AND ANALYSIS

#### 3.1. Contradiction between the Recordation System and the Declarative Principles

The legal ratio for giving a person or individual legal protection for "creation" stems from a theory that cannot be separated from the domination of the school of thought or the Natural Law Doctrine which emphasizes the human factor and the use of reason as it is known in the Civil Law System, which is common law system used in Indonesia.<sup>9</sup>

The influence of the principles of Natural Law in the Civil Law System on an individual who creates various creations which then obtain legal protection for creations which are intellectual property. This dynamic is also stated by S. Stewart namely:<sup>10</sup>

*Countries that follow the civil law tradition, however, regard authors' rights as natural human rights, or part of one's right of personality. As a part of this tradition, in addition to the protection of the author's economic rights, the protection of the author's "moral right" is an essential part of the system.*

Through this universal acknowledgment, there is no doubt that a creation has benefits for human life (life worthy) and has economic value, giving rise to three kinds of conceptions, namely:<sup>11</sup> (1) Conception of Wealth; (2) Conception of Rights; and (3) Conception of Legal Protection. Law as a social rule cannot be separated from the values in a society. In fact, it can be said that the law is a reflection of the values prevailing in society.<sup>12</sup> These values cannot be separated from the attitudes and characteristics that should be owned by people who are members of the society that is being developed. The most basic thing for the protection of intellectual property rights is that someone who has devoted his efforts to create/invent something then has the natural/basic right to own and control what he has created.<sup>13</sup>

Substantively, the notion of IPR can be described as "*property rights that arise or are born due to human intellectual abilities*". The description above basically provides clarity that IPR indeed makes works that arise or are born due to human intellectual abilities as the core and object of its regulation. Likewise in Copyright which is part of IPR, the understanding of property rights that arise or is born because of this intellectual ability, has the form of copyrighted works,<sup>14</sup> therefore, it is within the framework of this problem that the presence of Copyright regulations needs to receive proper attention.

<sup>9</sup> Satjipto Rahardjo., Law Studies., Alumni, Edition. 1st, Bandung, 1972, p. 292

<sup>10</sup> S. Stewart., International Copyright and Neighboring Right, 2d Edition, 1989, p. 33.

<sup>11</sup> Eddy Damian., Oc.Cit., hal. 18.

<sup>12</sup> Mochtar Kusumaatmadja., Legal Concepts in Development., Alumni, 4th Edition, Bandung, 2002, p. 10.

<sup>13</sup> According to Article 27 (2) of *Universal Declaration of Human Rights*, mentions that::

*"Everyone has the right to the protect of the moral and material interest resulting form any scientific, literary, or artistic production of which he/she is the author"*.

<sup>14</sup> Suyud Margono., *Law and Copyrights Protection.*, Novindo Pustaka Mandiri., 1st Edition, Jakarta, 2003, p. 4 - 5

In legal perspectives, Copyrights, like other rights known in IPR, is classified as an intangible individual property right. This bundle of right is exclusive, because the right is only given to the owner or right holder in question for a certain period of time to obtain legal protection to announce, reproduce, distribute, etc. the results of his copyrighted works, or give permission to other people to carry them out. Copyright is also often said to be exclusive, because it excludes other people from announcing, reproducing, or distributing, etc., except with the permission of the owner or right holder concerned.<sup>15</sup>

Copyrights is part of a group of rights called Intellectual Property Rights (IPR) whose arrangements are contained in the science of law and are called IPR Law. This so-called IPR Law covers a field of law dealing with juridical rights of works or creations resulting from human thought about economic and moral interests.<sup>16</sup> The field covered by intellectual property rights is very broad, because it includes all intellectual property which can consist of: literary, artistic and scientific creations.

According to WIPO<sup>17</sup> and based on the practice of countries, IPR is traditionally grouped into two groups of intellectual property (also compare with the table of Copyright objects as part of the protection of Intellectual Property Rights (IPR):

(1) Industrial property (industrial property) consists of:

- a. Inventions of technology (patents);
- b. Trademarks;
- c. Industrial Design;
- d. Trade secrets;
- e. Geographic Indication.

(2) Copyright (copy rights) and Related Rights (Neighboring Rights), which consists of among others:

- a. Written works;
- b. Musical works;
- c. Sound recordings;
- d. Musicians, actors and singers.

The definition of intellectual property is not a standard understanding, in this case WIPO's Opinion in General Information, as follows:<sup>18</sup> :

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<sup>15</sup> Bambang Kesowo., *Op Cit.*, p. 8

<sup>16</sup> Eddy Damian, *Copyrights Law*, Alumni, 2<sup>nd</sup> Edition, Bandung, 2004, p. 8.

<sup>17</sup> WIPO (*World Intellectual Property Organization*) didirikan berdasarkan *Convention Establishing the World Intellectual Property Organization*, yang ditandatangani 14 Juli 1976 di Stockholm dan mulai berlaku 1970. WIPO menjadi organisasi internasional bageian dari United Nations (PBB) pada Desember 1974).

<sup>18</sup> World Intellectual Property Organization, *General Information*, WIPO Publication No. 400 (E), Geneva, 1993, p. 131.

*No international treaty defines these concepts, and the various countries differ from each other on several important points. It is not possible, therefore, to give universally accepted definitions of the various forms of international property.*

Although there is no definition of intellectual property (industrial property and copyright) that is accepted as a general or universal term, there is no single generic term for the term intellectual property,<sup>19</sup> However, to be used as a guide in conducting subsequent discussions, it is better to present several definitions put forward by several authors,<sup>20</sup> that it is not possible to include an understanding of a definition that satisfies all those classified as intellectual property, and his opinion is as follows:

*There is no single generic term that satisfactorily covers them all, traditionally, the term "intellectual property" was used to refer to the rights conferred by the grant of a copyright in literary, artistic and musical works.*

The fundamental conception in the copyright legal regime is that copyright does not protect ideas, information or facts, but rather protects the form of expression of ideas, information or facts (expression of ideas). Which matters are also regulated by WIPO member countries, Australia for example, defines:<sup>21</sup>

*Copyright is form of intellectual property protection for a variety of creative works. It is not ideas but their expression which are subject to copyright.*

For this reason, specifically for copyright protection, it can be said that copyright exists in real form, and not the ideas themselves. So Copyright does not protect ideas or information until the idea or information is stated in a form that can be counted in the form of material, and can be reproduced. Starting from an understanding of all the previous matters and within the framework of avoiding an infringement on Copyright, regulatory signs have been carefully formulated in legislation.<sup>22</sup>

Apart from the meaning of the legal aspect, within the framework of international interaction for the protection of Intellectual Property Rights in general, Indonesia is one of the 110 countries that signed the final results of the Uruguay Round. Furthermore, Indonesia has officially ratified its participation and accepted the Convention Establishing the World Trade

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<sup>19</sup> W.R. Cornish, *Intellectual Property, Patent, Copyright, Trade Marks and Allied Rights*, Sweet & Maxwell, 2<sup>nd</sup> Edition, 1989, p. 3.

<sup>20</sup> Stainforth Ricketson and M. Richardson, *Intellectual Property : Cases, Materials and Commentary*, Butterwoths, 2<sup>nd</sup> edition, 1998, p. 3.

<sup>21</sup> CAL (Copyright Agency Ltd), *Copyright Information Sheet*, Copyright Agency Ltd, 2<sup>nd</sup> Edition, Sydney, 2000, p. 12.

<sup>22</sup> In Indonesia, since the 1970s efforts to regulate Copyright began and then gave results in the form of the 1982 Copyright Law. On April 12, 1982, the Indonesian government decided to revoke the provisions of Auteurs Wet, Staatsblad Number 600 of 1912 and at the same time promulgated Law Law of the Republic of Indonesia Number 6 of 1982 concerning Copyright as published in the State Gazette of the Republic of Indonesia Year 1982 Number 15 Law No. 7 of 1987 concerning Amendments to Law No. 6 of 1982 concerning Copyright, with a proposal due to the growth and development of science, art and literature. Furthermore, the Copyright Law system also underwent significant changes from a substance standpoint, this was not only experienced by Indonesia but also by the member countries that signed the WTO (World Trade Organization) agreement.



Organization with Law no. 7 of 1994. As a consequence of Indonesia's membership in the WTO, Indonesia, among other things, must harmonize all regulatory institutions in the field of Intellectual Property Rights with agreed norms and standards. In accordance with Article 65 of the TRIPs Agreement (Trade Related Aspect on Intellectual Property Rights and Counterfeit Goods Agreement), Indonesia as a developing country has a grace period of up to January 1, 2002. After the signing of the TRIPs Agreement, it has consequences for Copyright Law products in Indonesia to make changes in in order to meet the standardization of the implementation of the TRIPs Agreements.<sup>23</sup>

The Berne Convention is said to be the basis and reference for regulation of Copyright law for countries in the world or it is called a law making treaty, as we quote that WTO member countries must comply with all the provisions of the Berne Convention in their respective Copyright Law products, namely in part II Section 1: Copyright and Related Rights, TRIPs Agreement, Article 9 related with Berne Convention:

*“Members shall comply with Article 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom”.*

The 1886 Bern Convention, in outline, contains basic principles regarding a set of provisions governing the minimum standard of protection given to creators and a set of provisions that apply specifically to WTO member countries. The participation of a country as a member of the Berne Convention contains three basic principles that give rise to the obligation of participating countries to implement their national legislation in the field of copyrights.

According to citation of Article 5 paragraphs (1) and (2) of the Berne Convention are as follows:

- (1) *Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union others than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.*
- (2) *The enjoyment and the exercise of this rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the works. Consequently, apart from the provision of this Convention, the extent of protection, as well as the means of redress afforded to the authors to protect his rights shall be governed exclusively by the laws of the country where protection is claimed.*

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<sup>23</sup> Amendments to the law were carried out by enacting Law no. 12 of 1997 concerning amendments to Law Number 6 of 1982 as amended by Law Number. 7 of 1987 and the last amendment with the promulgation of Law Number 28 of 2014 concerning Copyright which is considered to have complied with all the provisions in the TRIPs Agreement including several international Current Issues in the field of Traditional Copyrights, especially the protection of expression of folklore.

The provisions of the declarative principle in this international convention in the field of copyright are in accordance with the doctrine and legal principles of copyright protection. The fundamental principle in the copyright law regime is that copyright does not protect ideas, information or facts, but rather protects the form of expression of these ideas, information or facts (protected expression of ideas). Which is also regulated is determined by WIPO member countries, Australia for example, Copyright is defined:<sup>24</sup>

*Copyright is form of intellectual property protection for a variety of creative works. It is not ideas but their expression which are subject to copyright.*

It can be said that copyright exists in real form, and not the ideas themselves. So Copyright does not protect ideas or information until the idea or information is stated in a form that can be counted in the form of material (material form), and can be published (publication) or reproduced (reproduction) which then develops into the concept of wealth that provides benefits. Economy for the Author or the Rights Holder. The rights arising from a work under copyright are given by law simultaneously with certain privileges, namely the right to exploit the creation.

The conception of wealth in Copyrights that is exclusive is also conveyed according to Bruce A. Lehman, who argues:<sup>25</sup>

*Ownership of a copyright, or any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phone record in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.*

Copyrights ownership relates to the rights attached to or owned by the copyright holder. In general, copyright law provides several rights known as exclusive rights (a number of exclusive rights). In the following we quote some of the exclusive rights to a Copyrighted work, namely:<sup>26</sup>

*“These exclusive rights vary according to the different types of works and other subject-matter protected by copyrights. The owner of copyright in a literary, dramatic or musical work.*

According Indonesian Law that this provision for the Recordation of Works has the consequence that the Office of the Directorate General of Intellectual Property/DGIP (Indonesia IP Offices) has the authority under the law to manage the recordation of Works. including administration, namely DGIP acts to receive, examine and publish it in the Public

<sup>24</sup> CAL (Copyright Agency Ltd), *Op Cit.*, p. 12.

<sup>25</sup> Bruce A. Lehman, *Intellectual Property and The National Infrastructure : The Report of The Working Group on Intellectual Property Rights*, Information Infrastructure Task Force, USPTO, Washington D.C, September 1995, p. 137.

<sup>26</sup>Attorney General’s, Department Copyright Law Australia, Short Guide Copyrights Information, Attorney General’s Department Copyright Law in Australia, January 2000.

Register of Works. The consequence of this provision regarding the Recordation of Works is that the DGIP Office acts as an Examiner and determines whether a copyright work is eligible or not eligible to be registered. Even though there is no Substantive Examination in the Recordation of Works, this will be a problem, especially regarding the objectivity of the examiner.<sup>27</sup>

### 3. 2. Copyrights protection on Digital Works in relation with Recordation System

At the beginning, the Internet project was initiated by the Defences Advance Research Project Agency switched network (ARPANET), which then combined with an academic network of the National Science Foundation Net (NSF-NET), and then developed to the public not only for social communication purposes but also for the commercial purpose. At that time there has been a clash of paradigms and interests of the parties who have an interest in the Internets.<sup>28</sup> Chris Reed said that it is a shift of the reduction in private property absolutism that prevents other people to access and then become the global property where many people have access to information resources, in other words 'property' became 'propriety'.<sup>29</sup>

In today's digital era, the presence of internet technology has created a very complex dilemma. Even in the early phase of the present internet has given rise to the prediction of The Death of Copyright. This view is widely expressed by John Perry Barlow member of the Grateful Dead. The emergence of this prediction is based on two reasons, namely; First, it is based on internet culture, which is a new, different reality that does not have to be subject to legal regulations; and Second, internet technology has made it easier to copy and distribute digital works.<sup>30</sup>

William Mougayar<sup>31</sup> provides the current simple definition of Blockchain as a decentralized method of recording every data, including and not limited to financial transactions, but can be values or assets in an encrypted ledger that cannot be changed continuously. In its latest development, it turns out that Blockchain technology can be used for many things and purposes, such as managing a company,<sup>32</sup> including for intellectual property rights.<sup>33</sup>

As a medium dominated by the paradigm of freedom of expression, freedom of communication, and freedom to access information, Internet became a means to access knowledge for its users. The desire to share and enhance each other are the motivation that should be appreciated by all those who involve into this network universe. Honesty and openness of expression without having a cover-up became the paradigm which typically were

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<sup>27</sup> Suyud Margono., *Copyrights Protection On The Internet: Critical Study On Declarative Principle Of Digital Works Recordation In Indonesia.*, Russian Law Journal Volume XI (2023) Issues 5., p. 1402-1405.

<sup>28</sup> Andrew D. Murray, *The Regulation of Cyberspace: Control in the Online Environment.*, New York: A Glasshouse book., 2007., p. .60-73.

<sup>29</sup> Chris Reed., *"Internet Law: Text and Materials"* (2nd edition). Cambridge: University Press, 2004. p. 88.

<sup>30</sup> Budi Agus Riswandi, *Blockchain Technology, Copyrights and Islam*, Speech on Professorship in Law Studies Faculty of Law University Islam Indonesia (UII), Jogjakarta, May 30, 2022, p. 3

<sup>31</sup> William Mougayar, *"The Business Blockchain: Promises, Practice, and Application of The Next Internet Technology,"* (1st edition; 2016) dikutip oleh Gonenc Gurkaynak, et al dalam "Intellectual Property Law and Practice in the Blockchain Realm," *Computer Law and Security Review* 34 (2018) p. 847-862

<sup>32</sup> Alexandra Andhov, *"Corporations on Blockchain: Opportunities and Challenges,"* 53 *Cornell Int'l L.J.* p. 1

<sup>33</sup> Seda Fabian, *"Blockchain and Intellectual Property Rights,"* 25 *U.S.F. Intell. Prop. & Tech. L.J.* p. 147.

found.<sup>34</sup> Not only within the scope of information had disclosure in order to implement good governance in all aspects but also had the clarity of information on a product before a transaction of goods and/or services traded.

The same thing applied to the clarity of information of digital products (eg, computer program) within the Internet that offered to all internet users as consumers across the country. Most users will ask for honesty and openness of reliability even the openness of expression in the programming itself that represented an instruction as a form of expression that conveyed the idea that became apparent as they are, so trust on the reliability on the system offered including the risks. So it would not be a transaction barrier because performed with honest and fair by all parties.<sup>35</sup>

In the context of the Internet, an electronic information in the form of binary code (0 or 1) in fact not only can be seen visually as shown information but it can also be potentially compromised by an invisible code in it. It does not only occur due to external parties but also occurs from the internal side. Similarly, a set of instructions that works as a computer program, may be had a destructive instruction that will work later on. One should aware that the real potential criminals not only dominated by the user perspective but also from the developer or the vendor itself may have possibility to misuse their right to lock the competition through innovation (IP abuse) with Another competitor, which in turn will adversely affect the public as consumers.

As described before, copyright protection on Internet focussing to any attempt to restrict access and usage of the creation. Things that considered as a violation is all activities that involve copying or make the work available to public without permission (eg, linking, framing, sharing/P2P, etc.) To prevent these kind of violations, specific technologies (e.g. encryption) is used so everybody cannot easily make a copy (copy control), access (access control measures), or change any information attached in other word to a creation (rights management information). Information Technology provides several ways to do locking, such as using CSS, DeCSS, dongles, etc. As a consequence, it is necessary to have legal protection mechanisms became a must by providing a legal obligation for everyone to appreciate the security system, where the breach of it will make the injured party be entitled to sue redress.

Ironically from time to time, the efforts to defend the rights of creations was always getting resistance from the other parties who are keen so an intellectual creations can freely accessible to public regardless the restrictions of its exclusivity (jail-break). Some of it considered this as a matter of fair use, because it is done on the basis of a legitimate motivation (e.g, reverse engineering to create an interface in the framework of inter- operability with other computer systems programs, encryption research for repair, improvement or further development), but some other do with the motivation to take advantage. Besides the technical protection efforts, creators can also perform administrative efforts for the sake of proving when necessary, by registering his creation on copyright registration office. Actually, this mechanism does not

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<sup>34</sup> Lawrence Lessig, *Code and Other Laws of Cyberspace*. New York: Basic Books,1999

<sup>35</sup> Prins, J.E.J., & Ribbers, P.M.A., et. al., *Trust in Electronic Commerce: The role of Trust from Legal, an Organizational and Technical Point of View*. Netherlands: Kluwer, 2002. p. 1-41.

prove the originality of a copyrighted work, but used only for initial evidence that the person concerned is the actual creators, if necessary.

The provisions regarding the Recordation of Works are not effective enough in providing Copyright protection, this provision only gives the impression that the Government of the Republic of Indonesia is actively providing protection for Copyright protection. There is a discrepancy in this provision for the Recordation of a Work (not always in line) that the protection of a Copyright is from the time the Work is completed, meaning that even without a Recordation a Copyrighted work is recognized and gets protection. Thus the provisions for the Recordation of Works in the Copyright Law are neither absolute nor obligatory (non-compulsory). In other words, the registration of works is carried out passively and voluntarily (voluntary application), meaning that all applications for recording are accepted without carrying out a substantive examination of the material for the application of creation, unless it is clear that there is a violation of copyright requirements.

Actually, Law Number 28 of 2014 concerning Copyright adheres to a declarative system, but there is a provision for the Recordation of Creations which actually contradicts the declarative system. The registration mechanism or concept is actually a continuation of the protection of Intellectual Property Rights with a constitutive system (Constitutive Principal) where ownership of an Intellectual Property Right is obtained due to a first-time Recordation (first to file). This Constitutive System in general can only be implemented for protection in the field of Industrial Property Rights consisting of Patents, Trademarks, Industrial Designs.

It is a different issue when the Internet has become the place for business commercialization. Industrialization interests demand that each person should not exploit any vulnerability on another party, because there is no perfect work that free from mistakes, meanwhile it cost them investment in improving the work. The computer program never be free from the potential errors in programming (bugs), therefore program developer licensed it by saying as is. The reason could be misused if it turns out that the distribution done intentionally and consciously to cut off the economic value of the parties who have legitimate interest.

**Table: The comparative example of violations on the Internet which involve interest.<sup>36</sup>**

<b>(violation without permission/ invalid)</b>		
<b>(c) all rights reserved</b>	<b>(cc) some-rights reserved</b>	<b>(pd) public domain</b>
some right retained and others granted to the public	all rights granted to the public	all rights are retained by the creator or copyright holder

<sup>36</sup> Edmon Makarim, *Online Piracy and Copyright Protection Through Internet (A Critical Review For The Intellectual Rights And Obligations Balance)*, Law and Development Journal, Faculty of Law University of Indonesia, Volume 9 Number 2 January 2012, p. 24

The example of violations (using without permission/ invalid) on the Internet mentioned which involve illegal exchanged either directly or by file-sharing systems between users, are very difficult to prevent. In fact, not all file-sharing system with Peer-to-Peer system (P2P) is against the law. Previously, such violations can be easily proven because P2P is still centralized, but when it decentralize, the abuse is relatively difficult to prove. In another way shall be applied to the abuse on Content Protection destruction.<sup>37</sup> Along with the use of encryption technology development, the development on decryption software tools is rising. Meanwhile, the infringement against a change in the creation information management on the Internet seems rarely happens. It indicates that the distribution on the Internet, generally not intended to possess, move, acknowledges the copyright of the creators, but just take the economic advantage of the creations.

Generally, the standard license agreement offered to the public has waived the responsibility by claiming the absence of a standard warranty of trade worthy (merchantability) and there is no guarantee of appropriateness to the benefit needed by the user (fitness for particular purposes). It only can give a guarantee of technical support according to ability and declaration of their R&D investment in product development, although royalties have been paid in advance without formulating a specific period of time. That only if the user violates the manufacturer's standard contract, so the creator should not be responsible anymore.

Indonesian Government through the Ministry of Law and Human Rights and the Ministry of Communication and Information Technology has issued joint Regulations No. 14 of 2015 and No. 26 of 2015 on the implementation of the closure of content and/or right of access for users of copyright infringement and/or relevant rights in electronic systems based on the provisions of Article 54 and Article 55 of the Copyright Law. This regulation also includes procedures for reporting, handling complaints, and review for parties affected by the closure of content or access. The purpose of this regulation is to effectively protect copyright and related rights in the digital environment, minimize copyright infringement, and create a legal environment that respects creative rights in the era of information and communication technology.

The digital platform as a form of information technology advancement is an online infrastructure based on software or devices that facilitate user interactions and transactions. Digital platforms allow all activities mentioned to be done in one place where informants, receivers, providers, and users of services, as well as sellers and buyers convene.

### **3.3. Legal Issues Related Copyrights Protection for Digital Works on Internet**

The protection of Intellectual property has negating opportunities for the science and technology to develop, by cover up something that should open, so there arose resistance movement against greediness in taking advantage of an intellectual creation. It represented by shifting private rights idea which seems so absolute (all rights reserved) to respecting the public

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<sup>37</sup> International Telecommunication Union, Understanding Cybercrime: A guide for developing countries, ITU Publication, 2009.

interest (public domain), such as by use of the 'copy left, sharing, or free use. This two-sides of interest has confusing the public because it seems there are two different legal regimes on IPRs. Indeed both the 'copyright' and 'copyleft' are constructed on legal system, especially the enforceability of copyright law to balancing the rights of creators with the right of the public.

In accordance with article 7 and article 8 TRIPs Agreement that the Intellectual property system not only gave birth to the protection of private rights but also the protection of the public interest to encourage technological development, transfer of technology, and prevent the abuse of IPR that may hinder fair competition or impede action the transfer of technology, with citation as follows:

Article 7 Objectives:

*“The protection and enforcement of IPR's should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”*

Article 8:

*(1) Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provision of this agreement. (2) appropriate measures, provided that they are consistent with the provisions of this agreement, may be needed to prevent the abuse of IPR's by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.*

Related to public interest and technological development Under Article 40 paragraph (1) and (2) TRIPs Agreement:

Article 40:

*section (1) Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.*

*Section (2): Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grant back conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.*

Therefore is possibility that the existence of the licensing can be misused to impede fair competition and it will make inhibition tor development of the technology itself and its spreading to the public. Unfortunately the formula was not further regulated or at least accompanied by a formulation of how obligation or liability of the owner of the intellectual should be executed and what the threat if it is not executed. While on the other hand, article 61of the TRIP's mandates that member states shall make provision for punishment (imprisonment and/or Objectives, containing as follows:

Article 61:

*“Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.”*

The protection and enforcement of IPR's should contribute to the promotion of technological innovation and to the transfer and dissemination of fines) against commercial copyright piracy done intentionally (on a commercial scale). It is understandable that the provision is addressed to the parties that take advantage as a seller, similar the production of goods with counterfeit brand (trademark counterfeiting). Based on the research, the mandate to criminalize this kind of a found explicitly in the TRIP's, but it only regulated who conduct discontinuation and seizure or remove the item so that it can no longer be used.

The next progression is the existence of the WIPO Copyright Treaty (WCT) and the WIPO Phonograms Treaty and Performer ("WPPT") in 1996. Both instruments states the need to maintain a balance between the rights of the creators (authors) and related rights (rights of performers and producers of phonograms) with a larger public interest, especially for educational purposes, research, and access the information as presented in the Berne Convention. WCT confirmed that Computer Programs in any form application and Data Compilations (Database) is an object that is protected as the work of science in the article 2 in the Berne Convention.

Article 6 WCT:

*“Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership Article 11 WCT, Obligations concerning Technological Measures.”*

WCT treaty clearly explain the existence of Distribution Rights (Right of Distribution) which includes



- (1) the exclusive right to grant permission to the original work or the copy available to the public, either through sales or through other ownership rights transfer,
- (2) Right of Rental, if it is an essential object, and
- (3) Right of Communication to the Public that includes electronic transmission. Furthermore, it also state the obligation that every person have to protect technological protection means (Obligation Concerning Technological Measures<sup>38</sup> used by the creators or copyright holders to restrict access to his creation, and the obligation to respect the integrity of information of the creation (Obligation Concerning Rights Management Information<sup>39</sup>) so any person cannot change the information related to ownership that inherent in creation.

The question is whether those obligations have demonstrated the balance between intellectual property rights and obligations, because the perspective is not an obligation of the creator but the presence of an external party's obligation to the Creator against the Creation. Then, how about the certainty of access to information and educational interests and research study these creation, do they could do reverse engineering. Surely it would be a clash between the obligations to maintain technology control with the right to reverse engineering that allowed by about Trade Secrets Act.

Regarding criminal aspects, about copyright infringement back on the Convention on Cybercrime and including the strategic discussion on asset protection that are included in the discussion of Cyber security. In the framework of this subject matters, it is important to review whether the legal protection of Copyright, based on national legal products, especially Law Number 28 of 2014 concerning Copyrights, specifically regarding the Recordation of Works, is it in accordance with the legal principles that apply among the international community, especially arrangements as stipulated in the TRIPS Agreement, which was ratified by Indonesia Law Number 7 of 1994. Thus, based on this frame of mind there is a temporary answer or hypothesis that the existence of the provisions on the Recordation of Creations as regulated in Law Number 28 of 2014 concerning Copyright causes violations The declarative principle means that a copyrights work is protected from the time it was first published.

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<sup>38</sup> Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law

<sup>39</sup> Article 12, Obligations concerning Rights Management Information:

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention: (i) to remove or alter any electronic rights management information without authority;(ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

(2) As used in this Article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

The provisions of Article 10 of the Copyright Law has provided more protection to creators or copyright holders compared to previous laws because it can be considered to provide a sense of justice for the creator for sharing any act of infringement of economic rights of a work as well as intended for market managers to appreciate the work of creators. Thus, the responsibility for the circulation of illegal copyrighted works does not only rest on the multipliers and sellers only.

Whereas the provisions in the Copyrights and Related Rights Law are related to the importance of blocking sites on the Internet that provide content resulting from copyrights infringement, so the party whose rights are violated can take legal action, as follows:

- Everyone who knows about Copyright and Related Rights violations through the electronic system can report it to the Minister of Law and Human Rights of the Republic of Indonesia c.q. Directorate General of Intellectual Property (DGIP);
- Ministry of Law and Human Rights R.I c.q Directorate General of Intellectual Property (DGIP) verifies Complaints along with reports;
- If sufficient evidence is found based on the results of the verification of the report, the Ministry of Law and Human Rights of the Republic of Indonesia c.q. DGIP recommends that the minister in charge of government affairs in the telecommunications and informatics sector be able to close the content,
- Access to justices, rights of users who violate copyright and/or related rights in electronic systems make electronic system services.

Related to the issue of publication and reproduction of Works on the internet, it really needs protection with several aspects including:<sup>40</sup>

- Aspects of Protection of Rights (Owners and Licensees);
- There are criteria and the concept of the Safe Harbour Doctrine in the law Enforcement for Intellectual Property, including Copyrights infringement;
- Implementation of legal responsibilities or liabilities that are not clear in their application with several principles including, Landlord Liabilities, Strict Liabilities, Criminal Liabilities;
- Commercial aspects of the implementation of Law Enforcement of Copyrights Infringement Practices in online commerce (E-Commerce).

Indonesian Government has issued Regulations concerning the implementation of the closure of content and/or right of access for users of copyright infringement and/or relevant rights in electronic systems based on the provisions of Article 54 and Article 55 of the Copyright Law. These regulations provide a legal basis for copyright holders to apply to the relevant ministry or agency to close access to or remove content that infringes copyright or relevant rights on certain digital platforms or websites. This process is carried out with due consideration of the

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<sup>40</sup>Suyud Margono, "Technical Standard Copyrights Recordation on Platform Digital", paper presentation Webinar., Indonesian Intellectual Property Attorneys Association supported Directorate General Intellectual Property (DGIP), Ministry of Law and Human Rights RI, September 29, 2022

principles of fairness and balance of rights as well as the rights of users of information and technology.<sup>41</sup>

In the context of Indonesian positive law, user-generated content (UGC)-based digital platforms have been regulated by electronic system operators or PSEs in the scope of private UGC in Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 concerning electronic information and transactions or EIT Law and the Regulation of the Minister of Communication and Information Technology No. 5 of 2020 on electronic system operators. Due to its extensive nature, there are different types of digital platforms and these differences emerge along with their diverse functions and purposes. Until today, digital platforms continue to develop from static to interactive. The use of digital platforms in the form of user-generated content (UGC) is one example of such development.

#### 4.0 CLOSING

Digital Works protection are based on international legal provisions and applicable legal doctrines as well declarative principal in the practice of protecting Intellectual Property Rights which universally refer to the enforceability of the provisions of international conventions in the field of Copyrights, especially the Berne Convention, where every author's work has received automatic protection. since a work becomes real (real expression), its protection is given directly without depending on the author's country of origin (direct and independent protection). This provision applies equally to all countries that have ratified the Berne Convention, including WTO member countries that have also signed the TRIPS Agreement. Thus there is no need for state intervention, including a state to establish a system for registering a copyrighted work, which will then serve as proof or formality of ownership of a work.

The relationship between the Recordation of Works based on Law no. 28 of 2014 concerning Copyrights protection on the internet is carried out while still being enforced in a negative-declarative manner in curent status copyrights works (such as written, music, program, application) in technology development shall be aplyed on trough the internet which is exteremely protected automatically based publication doctrine in including matter of , thus the provisions for the recordation of Copyrights Works cause violations of the principle of ownership of copyrighted works obtained since the creation was first published.

Provisions for the Recordation of Works as referred to in Law Number 28 of 2015 as Normative Law concerning Copyright in Indonesia. with this provision for the Recordation of Works, it has the consequence that the DGIP Office has the authority based on the law to manage the Recordation of Works. including administration by DGIP in terms of acting to receive, examine and publish it in the Public Register of Works. The consequence of this provision regarding the Recordation of Works is that the DGIP Office acts as an Examiner and determines whether a copyrighted work is eligible or not eligible to be registered. The user-generated content UGC digital platforms are currently in demand and at the same time with the development of copyright, most UGCs provide users with access to songs or videos that aim to attract a large

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<sup>41</sup> The Constitutional Court of the Republic of Indonesia International Treaties Ratified for Protection of Indonesian Copyrighted Works A material judicial review hearing of Law No. 28 of 2014 on Copyright to hear the House and the President, (10/19/2023).

audience, this encouraging users' creativity in incorporating original copyrighted works into unique and interesting contents.

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