



The Effectiveness of Mediation as a Dispute Resolution for e-book Copyright Infringement Cases in Indonesia: (Case Studies Occurring in the Jakarta and Riau Areas)

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ABSTRACT

The effectiveness of Mediation as a dispute resolution of e-book copyright infringement cases in Indonesia related to case studies that occurred in Jakarta and Bandung is more precisely regulated in Law Number 28 of 2014 concerning Copyright. The problem of this research is how examples of e-book copyright infringement cases and how the effectiveness of Mediation in resolving disputes over e-book copyright infringement. The objectives of this study are, first, to determine the forms of copyright infringement relating to e-books. Second, to review and analyze the effectiveness of mediation as a settlement of copyright infringement disputes in the manufacture of e-books through cases that have occurred in the Republic of Indonesia. The research method used is the normative juridical method. This method specializes in legal principles, namely UUHC. The results showed that the forms of copyright infringement in the manufacture of e-books, namely, first, pirates make copies (unauthorized copies) of e-books illegally, hidden and unknown to others, let alone law enforcement and taxation. second, downloading e-books with the aim of distribution or for commercial purposes. third, printing e-books that have been purchased is included in the act of copying creation. fourth, changing the format of a book into an e-book and including the author's name without prior notice to the author of the book is included in the category of infringement. The effort found in both cases is mediation through the DJKI institution in accordance with the provisions of Article 95 paragraph (4) of the UUHC which expressis verbis regulates that criminal charges can only be filed if the parties to the dispute have taken mediation efforts, this regulation is the ultimum remedium.

Keywords : E-Books, Mediation, Copyright Infringement.

ABSTRAK

Efektivitas Mediasi sebagai penyelesaian sengketa kasus pelanggaran hak cipta e-book di Indonesia terkait studi kasus yang terjadi di Jakarta dan Bandung lebih tepatnya diatur dalam Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta. Permasalahan penelitian ini adalah bagaimanakah contoh kasus pelanggaran Hak Cipta e-book dan bagaimanakah efektivitas Mediasi dalam menyelesaikan sengketa terhadap pelanggaran Hak Cipta e-book. Tujuan dari penelitian ini adalah, pertama, untuk mengetahui bentuk-bentuk pelanggaran hak cipta yang berkaitan dengan e-book. Kedua, untuk mengkaji dan menganalisis efektivitas mediasi sebagai penyelesaian

sengketa pelanggaran hak cipta dalam pembuatan e-book melalui kasus-kasus yang pernah terjadi di Negara Republik Indonesia. Metode penelitian yang digunakan adalah metode yuridis normatif. Metode ini menghususkan pada asas-asas hukum yaitu UUHC. Hasil penelitian menunjukkan bahwa bentuk-bentuk pelanggaran hak cipta dalam pembuatan e-book yaitu, pertama, pembajak membuat salinan (copy tanpa izin) e-book secara ilegal, tersembunyi dan tidak diketahui oleh orang lain, apalagi penegak hukum dan perpajakan. kedua, mengunduh e-book dengan tujuan untuk disebar atau untuk tujuan komersil. ketiga, mencetak e-book yang sudah dibeli termasuk dalam perbuatan menyalin ciptaan. keempat, merubah format sebuah buku menjadi e-book dan mencantumkan nama pengarangnya tanpa ada pemberitahuan terlebih dahulu kepada pengarang buku tersebut sudah termasuk dalam kategori pelanggaran. Upaya yang ditemukan pada kedua kasus tersebut adalah mediasi melalui lembaga DJKI sesuai dengan ketentuan Pasal 95 ayat (4) UUHC yang secara *expressis verbis* mengatur bahwa tuntutan pidana baru dapat diajukan apabila para pihak yang bersengketa telah menempuh upaya mediasi, peraturan ini bersifat *ultimum remedium*.

Kata Kunci : E-Book, Mediasi, Pelanggaran Hak Cipta.

INTRODUCTION

It is common knowledge and we all know that in any country, even in Indonesia, which is one of the developing countries, whose growth and development is very dependent on science and technology (IPTEK). The development of technology, especially computer programs and information-based internet, has contributed greatly, especially matters relating to industrial activities.¹ In terms of its development, there are many inventions in the field of technology and works that are very susceptible to being stolen, pirated, and so on. Where the perpetrators of the crime are very irresponsible about it. Therefore, one of the legal systems called Intellectual Property Rights (IPR) was born, which can be understood from its naming, namely as the right to an object / item / creation that is tangible or intangible (intellectual property rights). With the birth of this system, it becomes a very important factor, to protect an inventor in developing his work, innovating to create things that in the future are expected to support socio-economic development, supporting competitiveness in the world of technology in the international scope so that Indonesia can become a developed country.

Copyright is one part of IPR that was born and declared to be a protection for the creators / makers of a work that is realized into a legislation. The copyright is the exclusive right of the creator that arises automatically based on the principle of declarative after a creation is realized in real form without reducing the restrictions in accordance with the provisions of the legislation. And the copyright holder is the creator as the owner of the copyright, the party who received the right legally from the creator, or other parties who receive further rights from the party who received the right legally. In essence in Act No. 28 Th 2014 on copyright apat in the sense that copyright includes economic rights and moral rights. Economic rights which means the right of a creator to introduce (right to

¹ Muchtar Anshary Hamid Labetubun, "Aspek Hukum Hak Cipta Terhadap Buku Elektronik (E-Book) Sebagai Karya Kekayaan Intelektual," *Sasi* 24, no. 2 (2019): 141.

publish or right to perform). As for the moral rights in question has the meaning that the right of a creator to put his name in the work created (attribution right or right of paternity) and the right for each creator to prohibit others to damage or misuse of his creation (right of integrity).²

From the above understanding we can understand that copyright is actually more fundamental to the exclusive rights of the creator, the exclusive rights in question is that other parties are not allowed to use these rights for any purpose without the knowledge or permission of the creator or justified under the law.³ In response to this, in the era of globalization, the protection of the rights of creators / inventors is very diverse, complicated and interrelated, and along with the development of technology, there are more and more platforms that use the internet and even AI (smart robots), including buying and selling platforms, libraries, travel agents, wallets, etc., all of which are digitally based through social media which are designed in such a way as to attract consumers.

In fact, we cannot deny that online shopping has become one of the most popular trends in society. One of the works of creation that is very often found on online sales platforms is books. Books are an object of IPR creation that has contributed to improving the quality of human resources (human resources). These works can be in the form of printed books or in the form of digital books (e-books) in the form of formatted files (pdf, doc, txt) and can be downloaded and read through electronic devices. These forms of books each have advantages and disadvantages. Printed books circulating in large bookstores have and/or include an international serial book number (ISBN). By having an ISBN, printed books have strong or trusted validity and can be used as a source of reference for academics as a reference in compiling their scientific work.⁴

While Electronic Books (e-books) or digital books are another version of a book in the form of a format or electronic that requires an electronic medium (computer/laptop, smartphone., tablet etc.) in order to be read. Because e-books seen from their understanding have the properties of digital objects, it is not an exaggeration to call them electronic objects/digital objects.⁵ If in general a book is composed of several papers collected which can contain text or images, then an e-book contains all kinds of digital information which can also be in the form of text or images. E-books are loved because of

² Ruhiat Sobirin, "Perlindungan Hukum Terhadap Hak Ekonomi Pencipta E-Book Atas Proses Pendistribusian e-Book Berdasarkan UU No. 28 Tahun 2014 Tentang Hak Cipta Dikaitkan Dengan UU No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *Jurnal Hukum Media Justitia Nusantara (MJN)* 7, no. 1 (2017): 30, <https://doi.org/10.30999/mjn.v7i1.526>.

³ Ida Ayu Lidya Nareswari Manuaba dan Ida Ayu Sukihana, "Perlindungan Hak Cipta Pada Buku Elektronik (e-book) Di Indonesia," *Jurnal Kertha Semaya* 8, no. 10 (2020): 1590.

⁴ Denny Kusmawan, "Perlindungan Hak Cipta Atas Buku," *Perspektif* 19, no. 2 (1 Mei 2014): 137, <https://doi.org/10.30742/perspektif.v19i2.16>.

⁵ Anthon Fathanudien dan Vina Maharani, "Perlindungan Hukum Hak Cipta Terhadap Buku Elektronik (E-Book) Di Era Globalisasi," *Logika: Jurnal Penelitian Universitas Kuningan* 14, no. 01 (3 Maret 2023): 54, <https://doi.org/10.25134/logika.v14i01.7287>.

their small size when compared to books and also have a variety of features, including search features, automatic bookmarking features and others.

Seeing such a thing is not excessive protection is needed for it through IPR, namely copyright considering how much the book is needed for the community, especially for students and other academics in improving science. And if we look again more carefully, in the creation of a work of the book on until the process can be accessed and enjoyed by the community is not very easy. Because it involves many resources. In reality, along with the radical development of the world of technology in contrast to the preparation and understanding of the community towards the law, many of the people we can observe today are not able to match / compensate for any access to the media that arises due to the use of information technology. Many crimes that occur and develop are also committed without even realizing it. What is done through these platforms unwittingly causes harm to others, one of which is widely found is copyright infringement in the form of e-book piracy, illegal book sales and others.

Here are some of the copyright infringement cases against books that occurred in Indonesia:

- a. The e-book copyright dispute that occurred in Jakarta on the 20th began with a report from the Copyright Care Association (PPKC) which complained to the Directorate General of Intellectual Property (DJKI) regarding the discovery of illegal e-book sales on online sales platforms (online markets) Tokopedia and Carousell conducted by the owner of the Carousell account "Debobiz802", and continued by the DJKI to follow up on the case by bringing together the two reporting parties and mediation of the dispute in order to achieve the word "peace" between the two parties.
- b. Related to the same report again, namely the copyright of e-books which this time reported by Perkumpulan Peduli Karya Cipta (PPKC) as the reporter and SMK Kehutanan Pekanbaru as the reported agency that occurred in Riau on January 27, 2023 and ended with almost the same provisions again that is not to repeat the illegal act again, but there is little difference in the violations committed through the site developed by the reported party and also other demands which must be willing to conduct socialization and counseling related to copyright in the SMK environment.

The process taken in both cases was mediation. What is meant by mediation here is an effort made through several negotiation processes to obtain an agreement of the parties with the assistance of a mediator who is required for the mediator to be neutral so as not to cause dissatisfaction from one of the parties to the dispute and also a mediator does not impose a settlement. The result of mediation that is successfully achieved is a peace which is then strengthened by the mediator into a peace deed and we also know in

the case above that the mediator who mostly applies in Indonesia is from the Directorate General of Intellectual Property (DJKI), because it is expected that the DJKI can understand the subject matter of the dispute because it is the scope of the work area that is usually handled by the DJKI.⁶

METHODS

The writing of this article uses empirical juridical research methods.⁷ This method specializes in legal rules where the law is described as what is written in laws and regulations or is made the basis for carrying out norms that are the result of human socialization which can be said to be feasible. The research relies on primary and secondary legal materials. Namely referring to the norms listed in the legislation. Especially Law Number 28 of 2014 concerning Copyright and theoretical results from several scientific works.

RESULTS AND DISCUSSION

Chronology of the case in Jakarta and its Dispute Resolution

This incident occurred on Tuesday, September 20, 2022, more precisely at the DJKI office. Which at that time followed up on a report from the Copyright Work Care Association (PPKC) which submitted to the DJKI regarding the discovery of illegal e-book sales on the Tokopedia and Carousell marketplaces. There were 61 victims of writers whose works were pirated and traded illegally. Furthermore, the DJKI through the Directorate of Investigation and Dispute Resolution directly brought together the PPKC reporting party and the reported Carousell account owner "Debobiz802".

From the results of the meeting, DJKI managed to reconcile between the two disputing parties, with the reported party willing to agree on some compensation for selling e-books illegally. Among the results of the agreement is that the reported party must be willing to pay the cost of material losses in the amount of 20 million rupiah, be willing to make a clarification video with the contents of apologizing, and make a written statement with the contents will not do the illegal act again. Although according to the Coordinator of Prevention and Dispute Resolution of DJKI, Ahmad Rifadi, "Usually the

⁶ Freddy Harris, Daulat P. Silitonga, dan Agustinus Pardede, *Modul Kekayaan Intelektual Tingkat Dasar Bidang Hak Cipta* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2020), 74.

⁷ Muhaimin, *Metode Penelitian Hukum* (Nusa Tenggara Barat: Mataraman Univesity Press, 2020), 85, <https://zlibrary-id.se/book/19217997/c84306>.

dispute is caused by the uploader's ignorance that the book is protected as a work, then it is traded. I think dispute resolution through mediation can be simple, fast and low cost."

Chronology of Riau Cases and Dispute Resolution

An almost similar incident that began with a report submitted by the victim (author) who is a member of PPKC that an e-book had been found uploaded on a website belonging to SMK Kehutanan Pekanbaru in the form of a library. The e-book can be freely downloaded, printed, and has been given a watermark. The victim, who at that time realized this, asked for help from his community, namely PPKC, to be followed up immediately, where there were many victims who were indicated, namely 6 victims, including 3 publishers and 3 authors, with a total of 13 titles of works. Then the incident continued on Tuesday, February 14, 2023. By conducting mediation conducted by DJKI, bringing together the attorney from PPKC, Devi Devita with the Principal of SMK Kehutanan Pekanbaru, Muhammad Ilyas as the sued party in the meeting room of the Riau Legal and Human Rights Services Division.

In the mediation, a result was achieved in which the reported party was willing to pay compensation for the losses received by the applicant. In addition, the reported party is also willing to conduct socialization and counseling related to copyright for teachers and students in the environment of SMK Kehutanan Pekanbaru. According to the Sub Coordinator for Prevention who also acted as mediator Cecep Sarip Hidayat, "From today's mediation, the complainant demanded material compensation of 13,900,000 rupiah, but was willing to accept compensation paid by representatives of SMK Kehutanan Pekanbaru of 5,000,000 rupiah."

Legal Views on Dispute Resolution through Mediation

In Law No. 28 of 2014 in article 95 (4) on copyright mediation is set as the preferred method in dispute resolution. The term mediation in English is called mediation,⁸ and also etymologically the term mediation comes from the Latin *mediare* which means "to be in the middle." Mediation must involve a third party (mediator) who must be neutral, and it is also desirable that the mediator does not have the power to make a decision. What is desired here is that a mediator only helps the parties to the dispute to reach a fair peaceful agreement that can be accepted by both parties to the dispute.⁹ The philosophical foundation of the basic principles of the implementation of mediation according to David Spencer and Michael Brogan refers to Ruth Carlton's view of the 5 (five) basic principles of mediation which became known as the 5 basic philosophies of mediation, namely the

⁸ Sudjana Sudjana, "Makna Mediasi Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Veritas et Justitia* 7, no. 1 (28 Juni 2021): 96, <https://doi.org/10.25123/vej.v7i1.3716>.

⁹ Dwi Tuti Maryati dan B. Rini Heryanti, "Pengaturan dan Mekanisme Penyelesaian Sengketa Non Litigasi di Bidang Perdagangan," *Jurnal Dinamika Sosial Budaya*, Juni 2011, 55.

principle of confidentiality confidentially, the principle of voluntary volunteer, the principle of empowerment empowerment, the principle of neutrality neutrality, and the principle of a unique solution. The five principles are required to be the basic framework of the mediator's work in carrying out the mediation process, so as not to lose direction in achieving the desired results.¹⁰

Cases that occur from the case studies listed are Jakarta and Riau is piracy which in the provisions of Article 95 paragraph (4) of Law No. 28 Th 2014 (in addition to copyright infringement and / or related rights in the form of piracy, as long as the parties to the dispute are known to exist and / or are in the territory of the Unitary State of the Republic of Indonesia must first take dispute resolution through mediation before criminal prosecution). What is meant here requires mediation except for the crime of piracy. It can be interpreted that the settlement of the e-book piracy case has achieved its effectiveness and efficiency in dispute resolution even though it is not required for piracy cases to conduct mediation, but in terms of various cases of its effectiveness in resolving a dispute, it is highly recommended in its implementation. And thus the implementation of mediation in disputes over copyright infringement of e-books whether it is piracy plagiarism etc. has run the attitude of restorative justice that is by restoring the reporter or victim in his position that the purpose of a mediation seeking a peaceful agreement, when compared to imposing a penalty on the reported or perpetrator. In the end, a creator or exclusive right holder whose rights have been violated by the reported party will get compensation in accordance with the results of the agreement.

Legal Consequences of non-Implementation of Mediation

Based on this, it can be interpreted that the implementation of mediation other than piracy is an attitude that must be implemented or is compelling. So that the legal consequences that arise as a result of not implementing it are null and void "nietig" or the claim can be canceled "voidable/vernietigbaar." Based on the description of Article 95 (4), it has been explained that the purpose of mediation is non-litigation mediation which refers to Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, with such a purpose, dispute resolution through non-litigation mediation aims to resolve disputes by using the way of thinking that the law must be sensitive to every development in society and also because the law has the aim of achieving prosperous justice so that it does not accept the "status quo".

In this case, the provisions of the law still contain a legal vacuum as to whether if the mediation is canceled or not carried out whether the case will stop or finish. There is no law that further regulates this. So this really hurts the sense of justice of the community in this case the complainants or victims. Therefore it is necessary when the case has been

¹⁰ Marthen B. Salinding, "Dasar Filosofi Mediasi Sebagai Pilihan Penyelesaian Sengketa Lingkungan Hidup," *Borneo Law Review* 1, no. 1 (25 Juni 2017): 47, <https://doi.org/10.35334/bolrev.v1i1.709>.

reported and carried out in a trial the attitude of the judge to ask first whether mediation has been carried out beforehand in the trial process. So that if mediation fails, the criminal case will continue, not stop, due to the failure to fulfill its obligations.¹¹ It is also important to have a deed of determination issued by the mediator from the results of an amicable agreement between the two parties to the dispute so that it can be used as evidence in court if there is a violation in carrying out the agreement and as a report to the district court, as an aid in making a decision on the outcome of the case.

CONCLUSION

We can find that from the results of fact-finding regarding dispute resolution through mediation is very effective in finding the subject matter and a solution that can be accepted by both parties to the dispute in reaching a peaceful agreement. Because in mediation there is a benefit for the common good in order to achieve the pleasure of the dispute, namely consensus. We can also find that in Law No. 28 of 2014 article 95 (4) that such mediation in copyright disputes over E-books is mandatory or mandatory except for criminal acts of piracy. Then the legal consequences that arise if the mandatory thing is not implemented is null and void or the claim can be canceled.

In its implementation in two cases that occurred in Jakarta and Riau, it should be noted that the task and role of the mediator in achieving a result is to "help" by promoting the concept of neutral and achieve justice as fair as possible without prioritizing the ego of each in determining who wins and loses but what needs to be achieved is a win-win solution. Nevertheless, with the results that have been achieved, it should be noted that in the occurrence of the dispute arises due to the lack of moral attitude of society towards the times, as well as a lack of understanding of intellectual property, especially copyright on e-books which is a legal adaptation of the copyright of a book and violations that may occur due to ignorance. Therefore, it is necessary to improve through teaching morals and attitudes in the face of radical developments and in line with the socialization of legal developments with the times.

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¹¹ Sudjana, "Makna Mediasi Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," 107.

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