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RESEARCH ARTICLE

Copyright Protection of Book Authors under Publishing Agreements with Publishers

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ABSTRACT

Books are among the works protected by Law No 28 of 2014 on Copyright. In practice the relationship between an author and a publisher is set by a publishing agreement, yet the Copyright Law does not require that agreement to be in writing. This article examines how the Law protects authors of books, whether a written publishing agreement is required, and how protection works in practice. It uses normative juridical research with a statute approach and a conceptual approach, drawing on library research. It finds that the Law protects book authors through moral and economic rights, and that protection lasts for the author's life and 70 years after death unless the rights are assigned. The Law requires a written agreement only for licences; between author and publisher the principle of freedom of contract applies, so whether an agreement is made is left to the parties. In practice, however, written agreements are always made, and they usually take the form of standard-form contracts drafted by the publisher, which leaves the author with a choice only between accepting and refusing. Non-standard agreements balance the rights and duties of the parties better. The article recommends that publishing agreements be negotiated rather than imposed, and that protection of authors be given more attention in practice.

Keywords: legal protection; copyright; book author; publishing agreement; publisher

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1. Introduction

Books are an important support for education. They carry knowledge and information, and through them people put down ideas, arguments, constructive criticism and scientific findings. Books spread ideas, open a window on the world, entertain and teach, and serve as a means of communication between an author

and readers. Where scholarly books are published to advance knowledge, the relationship between the author and the publisher needs legal protection, and the legal side of the publishing agreement therefore needs to be examined.

This article asks three questions. How does Law No 28 of 2014 on Copyright (the Copyright Law) protect the author of a book and the book itself? Does the Law require a written agreement between author and publisher? How are the agreement and legal protection carried out in practice?[1]

2. Method

The research is normative juridical research with a descriptive character. It studies the legal norms on copyright protection of book authors under publishing agreements and how the positive law applies to the problem. Two approaches are used: a statute approach, which examines the Copyright Law, the Civil Code and other legislation connected with publishing agreements, and a conceptual approach, which draws on the views of scholars, legal theory, and the principles of the law of contract.

The data are secondary. The primary legal materials are the legislation just named. The secondary materials are scholarly books, law journals, earlier studies and the views of legal scholars, and the tertiary materials are legal dictionaries and encyclopaedias. The data were gathered through library research, offline in libraries and online through electronic journals, legislation and other scholarly references.

3. Results and Discussion

3.1 Protection of the book author under the Copyright Law

Copyright is an exclusive right that the State gives to a creator over the intellectual work that the creator produces. Under Article 1(1) of the Copyright Law, it is an exclusive right that arises automatically, on the declarative principle, once a work is given tangible form, subject to the limits set by legislation. A book is one of the works protected under Article 40(1)(a). Protection is given to the author as creator from the moment the work takes tangible form, without registration. Recordation of the copyright remains useful as evidence if ownership is disputed.

Protection covers moral rights and economic rights. Moral rights attach to the creator permanently. They include the right to be named as creator, to use a pseudonym, to change the work in a suitable way, and to defend it against distortion that harms the creator's honour and reputation. They cannot be assigned while the creator lives, so they remain with the author even after the economic rights have been transferred. The economic rights, set out in Articles 8 and 9, allow the creator to benefit financially from the work by publishing, reproducing, distributing, translating, adapting or licensing it. In book publishing these rights are normally exercised through an agreement that fixes the royalty, the term of publication, the number of print runs, and the rights and duties of each side.

Under Article 58, the copyright in a book lasts for the life of the author and for 70 years after the author's death, unless the parties agree otherwise, for example by an outright sale or another assignment. Under Article 40, protection also reaches works that have not yet been announced to the public but have been given a tangible form that allows them to be reproduced.

[1]Law of the Republic of Indonesia No 28 of 2014 on Copyright.

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3.2 Is a written publishing agreement required?

The Copyright Law does not expressly require an agreement between author and publisher, whether oral or written. A written agreement is required only for a licence, under Article 80. For the relationship between author and publisher the principle of freedom of contract applies, and whether an agreement is made is left to the parties.

In practice, though, a written agreement is always made. It gives certainty about the rights and duties of both sides and guards against default. The publisher usually obtains the right to reproduce and market the book with the author's consent, and the author receives a royalty on the terms agreed. The agreement may take a standard form or a non-standard form. A non-standard agreement balances the rights and duties of author and publisher better, because the parties can settle the clauses freely, in keeping with freedom of contract. So although the Law does not require it, a written agreement is a practical need if both sides are to have certainty and balanced protection.

3.3 Agreements and protection in practice

In practice, protection of the author does not yet fully give legal certainty and justice. The agreement is usually a standard-form contract that the publisher has drawn up in advance. Non-standard agreements exist, but they remain relatively rare. A standard agreement sets out the copyright position, the royalty, distribution and the term of the agreement, but the publisher fixes the content alone, and the author's bargaining position is weaker.

The author is expected to read the agreement closely before consenting, above all on the transfer of rights, the term of the exclusive right, the royalty rate, and the sanctions for breach. A standard agreement gives certainty to the publisher's business, but it does not give the author proportionate protection. For that reason the study stresses that a non-standard agreement can better balance rights and duties, because its clauses can be negotiated.

Carrying out the agreement also concerns the author's payment, either by outright sale or by royalty. Under a royalty system the amount is fixed by agreement, as Article 80 of the Copyright Law provides. The author should still be careful about discrepancies in the reported numbers of copies printed and sold, since they directly affect the royalty received.

4. Conclusion

First, the Copyright Law protects the author and the book as a work, through moral and economic rights, for the author's life and 70 years after death, unless rights are assigned by agreement, and it also protects works that have not yet been announced. Second, the Law does not require a written agreement between author and publisher; it requires one only for licences, and for the rest it leaves the matter to freedom of contract. In practice a written agreement is nevertheless made, to give certainty when one party defaults, and non-standard agreements are better than standard ones because they balance the interests of both sides. Third, the implementation of protection still does not give authors certainty and justice, because publishing agreements are usually standard-form contracts that the author can only accept or refuse.

The study makes three recommendations. Authors of books should be protected so that they have certainty and justice, since books carry cultural, economic and educational value and support national literacy. Publishing agreements should not be based on standard forms, so that author and publisher can each settle

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clauses freely under freedom of contract. And in practice more attention should be paid to the protection of authors, so that interest in writing books in Indonesia grows and contributes to knowledge.

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