ALTERNATIVE RESOLUTION OF INTELLECTUAL PROPERTY DISPUTES AS PART OF INVESTMENT IN THE CREATIVE INDUSTRY SECTOR UNDER INDONESIAN LAW

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Abstract

Purpose: The amount of investment in Indonesia both foreign and domestic increases in number each year. One of the growing investment in Indonesia is the creative industry. Creativity from this creative industry produces a variety of works protected by intellectual property. The development of intellectual property law advanced rapidly. One form of intellectual property is copyright. The many interests in the implementation of this copyright cause some problems and disputes. Indonesia itself recognizes some non-court settlement disputes namely arbitration and mediation so that intellectual property may remain protected.

Methodology: This research study gathered secondary data from literature review, online article, dialogues and different document available on the internet regarding the copyright law. In addition, this research study has analysed different Indonesian law regarding copyright.

Main Findings: There are rights in copyright protected by law. In-Law No. 28 of 2014 it is possible to settle disputes outside the court through several methods. Article 95 of Law No. 28 of 2014 on Copyright stipulates that Settlement of Copyright disputes may be made through alternative dispute resolution, arbitration, or courts.

Implications/Applications: The findings of the study are helpful in gaining knowledge regarding law available regarding copyright and settlement of Copyright disputes through alternative dispute resolution, arbitration, or courts, etc.

Keywords: Investment, copyright, alternative dispute resolution, intellectual property, industry.

INTRODUCTION

At this time Indonesia is growing in all areas. The development in Indonesia occurred because of the activities of the community and also the existing technology. Society is no longer just doing things in the real world even now doing in cyberspace for all activities. Activities that can be done in the form of business activities, communication, but also find a place or direction.

This technological advancement is also slowly changing the pattern of economic activity in the community. Activities that exist in the community no longer do traditional buying and selling, but also conduct buying and selling activities through cyberspace. The greater human opportunities to engage in economic activities encourage people to be more creative than ever.

Creativity in this society is spilled in several ways. One of them is the creative industry. One of the things that also encourage the creative industry is to reward creative industry players. Nippon Paint supported by the Indonesia Creative Economy Agency (Bekraf) held Asia Young Designer Award (AYDA), Asia's largest architectural and interior design competition. AYDA 2017 Competition was attended by more than 500 students majoring in architecture and interior design from 18 universities in Indonesia. The collection phase of the work begins in April 2017 and closes on September 4, 2017. Passing through rigorous selection was voted the top 6 finalists of architecture and interior design (Ibo, 2018).

The Creative Economy Agency (Bekraf) predicts 2018 will be the peak of creative economic growth. The Bekraf survey with the Central Bureau of Statistics (2016) reported that the creative economy industry in Indonesia in 2015 contributed Rp852 trillion to the national gross domestic product (GDP) in 2016 and rose to Rp922.58 trillion in 2016 with a contribution to the national GDP of 7.44 percent (Lestarini, 2018; Madani, 2017).

The development of the creative industry in Indonesia is experiencing rapid growth. Young people prefer to do creative industry. This creative industry covers a wide range of fields. To do this creative industry required sufficient capital. All economic activities require capital.

The need for capital is derived from a variety of investments. The growth rate of the creative industry makes investors more active and vigorous to invest in the creative industry. In the implementation of this creative industry needs to be protected. One of the protections provided is by protecting in the field of intellectual property.

Intellectual property protects in many fields. Lots of things are included in intellectual property such as copyright, trademark, patent, industrial design, trade secret, and others. This creative industry is very closely related to intellectual property. In this study that is discussed is about copyright. In the execution of the creative industry a lot of new things are there.
Creativity is the creator that creates a work of creation needs to be protected so that the economic and moral rights of a creature remain attached to the creator. In the implementation of economic rights and moral rights often arise problems. This problem arises as a result of the parties who are not responsible for neglecting the economic rights and moral rights of the creator of intellectual property.

The law No. 28 of the year 2014 establish on copyright by the Republic of Indonesia demands the defrayal of disagreements within as well as outside the court. In court, intellectual property disputes are resolved through a commercial court. “Alternative Dispute Resolution is a dispute resolution or disagreement institution through a procedure agreed upon by the parties, that is, an out-of-court settlement in consultation, negotiation, mediation, conciliation or expert judgment.”

ALTERNATIVE DISPUTE RESOLUTION

Generally, based on the nature of the process and its decision, dispute resolution can be categorized in 1:

1. The adjudication process, in which the nature of the dispute settlement places the disputing parties on two opposing sides (antagonistic) and the result of the decision issued by the third party authorized to decide is defeated and won (win-lose). The process of dispute resolution falling into this category is judicial (litigation) and arbitration.
2. The consensus process, in which the nature of the dispute settlement places the parties in a cooperative position and uses the principle of agreement in making decisions whether involving third parties or not, and the results of the decisions are win-win. Dispute settlement processes falling into this category are negotiation, mediation, conciliation, ombudsmen and fact seekers are neutral.
3. The pseudo-adjudication process, this dispute resolution process is usually a merger between the two dispute resolution processes above, so that the nature and results of the decision depend on the pattern of the process being collaborated. The process of dispute resolution included in this category is arbitration mediation, small trial, early neutral evaluation, and summary jury trial.

In dispute settlement known as the term of dispute settlement in court or litigation or settlement of dispute outside the court or known as non-litigation. An out-of-court dispute resolution is known as an alternative dispute resolution.

Law Number 30 of Year 1999 established by of the Republic of Indonesia Regarding Arbitration and Substitute Settlement Disagreement regulates some matters in alternatives of dispute settlement where Dispute or difference of opinion in question is civil nature can be settled by the parties through alternative dispute resolution based on good faith with putting aside the litigation settlement in the District Court.

According to Jimmy (2011), that Alternative Dispute Resolution is a means of dispute settlement conducted outside the court and its implementation is left entirely to the parties and the parties may choose to settle the dispute which will be followed through discussion, negotiation, conciliation, or making request for judgment by experts (Jimmy, 2011).

In Indonesia there are several things that go into alternative dispute resolution that is:

Consultation

“Consultation is a "personal" action between a particular party (client) with another party who is a consultant, where the consultant gives his opinion to the client in accordance with the needs and needs of his client” (Frans, 2011). Marwan and Jimmy (2011), explain the meaning of the consultation, as follows: "Request advice or opinion to settle a disagreement on a familial basis by the parties to a third party” (Munir, 2003).

Basically, the Law Number 30 of Year 1999 set of the Republic of Indonesia regarding Arbitration and Substitute Dispute Settlement does not explain in detail the consultation and how the procedure. However, many opinions are advanced by experts on consultation. One of the definitions of consultation is that consultation is a process that is usually based on characteristics of the same relationship characterized by mutual trust and open communication, working together in identifying problems, integrating personal resources to identify and choose strategies that have are likely to solve the identified problems, and the sharing of responsibilities in the implementation and evaluation of planned programs or strategies (Yetty, 2013; Boniface, 2016).

Negotiation

Negotiation is a means for the parties to the dispute to discuss the settlement without the involvement of a third party as a mediator, so there is no standard procedure, but the procedures and mechanisms are left to the agreement of involved parties to dispute. Resolution of dispute is fully controlled by the parties, informal, discussed in various aspects, not just legal issues (Muryati & Heryanti, 2011). In practice, the negotiation is done for 2 (two) reasons, namely: (1) to find something new that cannot be done alone, for example in the sale and purchase transactions, the sellers and buyers need each other to determine the price, in this case there is no dispute; and (2) to resolve disputes or disputes arising between the parties.

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1 http://badilag.mahkamahagung.go.id/
According to Sayud (2004), negotiation is like a two-way conversation deliberate to reach agreement in a case where both involved parties have unlike interests as well as different.

Conciliation

Conciliation is the settlement of disputes with the intervention of a third party (the conciliator), in which the conciliator is more active, taking the initiative of formulating and formulating the settlement measures, which are then offered to the parties to the dispute. If the party to the dispute is unable to formulate an agreement, then the third party proposes a way out of the dispute. However, the conciliator is not authorized to make a decision but only authorized to make recommendations, whose implementation is heavily reliant on good belief of parties to the dispute itself (Kapindha, Dwi, & Febrina, 2014; Putri, 2015).

Mediation

The definition of mediation is the settlement of disputes with the support of a neutral/impartial arbitrator. The role of the arbitrator is as a mediator (the passive) who provide assistance in the form of dispute resolution alternatives to be further established by the parties to the dispute. In the Regulation no. 1 of 2016 by Supreme Court on Procedures of Mediation in Courts, mediation is given meaning as a mode of disagreement resolution through the process of negotiation to get agreement of all parties with the help of the mediator.

According to Jimmy (2011), mediation is the process of dispute settlement by the mediation of third parties, namely parties who provide inputs to the parties to resolve their dispute because there is no obligation of the parties to obey what is suggested by the mediator (Ambikai & Ishan2016; Halim, Adnan, & Khusaini, 2017; Jimmy, 2011).

Arbitration

According to Article 1 number 1 of the Law Number 30 of Year 1999 set by of the Republic of Indonesia about Arbitration and Substitute Settlement Disputes concerning general provisions say that “Arbitration is the means of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute. The Indonesian District Court is not authorized to adjudicate the disputes of the parties which have been bound by the arbitration agreement.” Disputes that may be resolved through arbitration are merely disputes related to trade and parties rights.

Gunawan Widjaja said that arbitration is a form of alternative dispute resolution involving decision-making by one or more private judges, called arbitrators.

Principles applicable to alternative dispute resolution as follows (Jimmy, 2011):

1. The principle of good faith, namely the desire of the parties to determine the settlement of disputes that will or they are facing.
2. The contractual principle, namely the existence of agreements set forth in written form on how to resolve disputes.
3. The principle of binding, i.e. the parties are obliged to obey what has been agreed.
4. The contract freedom principle, i.e. the parties can freely decide what parties to the treaty shall regulate if it is not opposing to law and ethics. This also means agreement on the place and type of dispute resolution to be selected.
5. The principle of secrecy, i.e., the settlement of a dispute cannot be witnessed by others because only the disputing parties can attend the proceedings of the examination of a dispute.

COPYRIGHT IN THE SCOPE OF INTELLECTUAL PROPERTY IN INDONESIA

The term or terminology of Intellectual Property Rights (HKI) was used for the first time in 1790. Fichte who in 1793 said about the property of the creator is in his book. What is meant by property right here is not a book as an object, but a book in the sense of its contents (Syafinialdi, 2010)

In the division of the field of knowledge on intellectual property, intellectual property is divided into two major parts:

1. Copyrights
2. Industrial Property Rights

The term "Copyright" was first put forward in the Berne Convention of 1886. In the Berne Convention, the definition of Copyright is not formulated in a separate article but is implied in Article 2, Article 3, Article 11 and Article 13 of which the content is absorbed in Article 2 jo Article 10 Auteurswet 1912 (Saidin, 2004).

As per Article 1 number 1 of 2014 Law No. 28 on Copyright, interpreting “Copyright is an exclusive right of the Creator that arises automatically on the basis of a declarative principle after work is manifested in its tangible form without prejudice to restrictions in accordance with the provisions of the law”.

In connection with the provisions of Article no. 1 and Sub-Article no. 1 of Law Number 28 Year 2014 concerning Copyrights, further elaborated on the definition and the nature of the Copyright (Rachmadi, 2003; Djilali, Sarra, & Abdesselem, 2016):
1.Copyright is a special, exclusive or exclusive Rights granted to the Creator or the Copyright Holder. This means that other persons may not exercise such rights, except with the permission of the Creator or the respective Copyright Holder;

2. Special rights shall include the right of the Creator or the Copyright Holder to announce his Creation, reproduce his Creation and authorize another person to announce or reproduce the work of his Creation;

3. In the execution to announce or reproduce the work, either the Creator, the Copyright Holder, or any other person authorized, shall be conducted in accordance with applicable laws and regulations;

4. Copyright is considered to be the immovable moving object that can be transferred or transferred to another person.

A copyright-protected thing is an expression of an idea, so it's not protecting its own idea. This means that copyright law does not protect the idea alone, but the disclosure of the idea is in tangible form (Gatot, 2010; Hairudinor, Utomo & Jirhanuddin, 2017).

The object of copyright protection in the Berne Convention works in art and literature covering all literary, scientific and artistic results in any mode or form of expression. Intellectual works that are copyrighted in the TRIPs Agreement are: Works protected in Berne Convention, Computer Program, Database, Show (either live or recording), and Broadcasts.

Article 40 paragraph (1) of Law No. 28 of 2014 on Copyright which establishes Protected Works is a Work in the field of science, art or literature that includes:

1. Books, pamphlets, layouts, published papers, and all other written works;
2. Lectures, lectures, speeches, and other similar creations;
3. props made for educational and knowledge purposes;
4. Songs or music;
5. Drama, dance, choreography, musical drama, puppet, and pantomime;
6. Works of applied art;
7. Artwork of architecture;
8. Maps;
9. Other motif art or Artwork of batik;
10. Works of cinematography;
11. Portrait;
12. Works of photography;
13. Translation, modification, and other transformation work;
14. The compilation of traditional cultural expressions during the compilation is original work;
15. Video games;
16. Computer Program

In the implementation of intellectual property in Indonesia, there are often violations of copyright protected in Law No. 28 of 2014 on Copyright. This violation occurs because often many parties are not responsible and ultimately violate the copyright.

When a violation of the parties can resolve inside and outside the court. There are several copyright infringements possible to be discharged out of court. In addition to copyright violation or related rights like piracy and the parties to the dispute are known to exist and/or reside in the territory of the Republic of Indonesia, the dispute settlement shall take precedence through mediation.

CONCLUSION

There are rights in copyright protected by law. In-Law No. 28 of 2014 it is possible to settle disputes outside the court through several methods. Article 95 of Law No. 28 of 2014 on Copyright stipulates that Settlement of Copyright disputes may be made through alternative dispute resolution, arbitration, or courts.

REFERENCES


