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JURIDICIAL REVIEW OF DISASTER RESPONSE DISPUTES IN THE PUBLISHING AGREEMENT FOR COLLEGE OF DARMAJAYA PRESS

Dian Herlambang, Muhammad Ridho Wijaya

Dianherlambang03@gmail.com, ridhowijayaa@gmail.com

Faculty of Economics and Business,

Darmajaya Institute of Informatics and Business

Faculty of Law, University of Lampung

Abstract

Darmajaya Press as one of the publications in Bandar Lampung which is also a part of university publishing. Settlement of copyright disputes is very necessary to know and do to analyze how to resolve copyright disputes both in terms of moral rights and economic rights and also to answer the application of copyright that occurs in the Darmajaya Press publisher. This type of research is normative legal research. This type of research examines the implementation of positive legal provisions, agreements, contracts factually in legal events that occur. This type of research is descriptive in that this study has the aim to explain clearly and in detail in the legal events that occur. The results of the study indicate that the cooperation agreement between CV. Aura Publishing with IIB Darmajaya there has been a clause on the settlement of copyright disputes which is feared that it will arise in the future, namely by implementing a form of dispute resolution, namely alternative dispute resolution and courts; The application of copyright is carried out through the desire of Darmajaya Press to become a member of IKAPI, and in the agreement made there is a clause must reach 10 book publications, so that currently only 7 titles of ISBN books have been reached. Then the writer (lecturer) who published the book had not made a

publishing agreement to guarantee copyright both moral rights and economic rights owned by the author.

Keywords: Dispute Resolution, Copyright, Agreement, University Issuance

I. INTRODUCTION

The book industry in Indonesia has been developing for a long time. However, various problems still occur such as low public interest in reading so that many books are not absorbed by the potential reader market. In the field of book publishing, the copyright aspect is very important as a major component whether it is for the author and for the book publisher. That is said to be the main component because with the existence of this copyright, the rights of the book's author will be more secure and also the publisher has the legal force in publishing. Higher Education is also an educational institution that provides independent publishing in its development. In fact there is already a forum that makes all publications managed by universities throughout Indonesia shelter, the Indonesian Higher Education Publishers Association (APPTI).¹ Darmajaya Press (DJ Press) as one of the publications in Bandar Lampung, which also part of university publishing is increasingly developing works published by lecturers from internal Darmajaya colleges.

Various obstacles often occur, this is caused by lack of understanding both in terms of authors and publishers of copyright. Various cases occurring in the book industry. For example, we can see that the author's rights are not fulfilled or even copyright piracy takes place in the translation work. So it is necessary to understand how works that are categorized as public property, with works that are still in copyright and what must be done in the fulfillment of these rights for authors and publishers. Likewise, the settlement of copyright disputes that also need to be analyzed in order to fulfill these rights. Based on the background described above, the research problems in this study are as follows:

¹ <http://prasetya.ub.ac.id/berita/UB-Mendirikan-Asosiasi-Penerbit-Perguruan-Tinggi-Indonesia-Bersama-24-PT-2470-id>

- a) How is the settlement of copyright disputes in the Darmajaya Press college publishing agreement?
- b) How is the application of copyright in the publishing of the Darmajaya Press college?

This research was conducted with the aim of analyzing the settlement of copyright disputes in the publishing of the Darmajaya Press college and analyzing the application of copyright in the publishing of the Darmajaya Press college. This research is expected providing benefits to understand dispute resolution in publishing agreements regarding copyright and the application of copyright in the implementation of the agreement. The results of this study are also expected by the author to be a reference for the fulfillment of parties's rights regarding copyright in order to uphold the principle of *pacta sur servanda*. The urgency of the research can be explained by the writer that is contributing to realize the publication of tertiary institutions namely Darmajaya Press in implementing copyright properly and being able to overcome the constraints experienced and settling disputes in implementing the copyright.

This research can be categorized in the type of normative legal research with a library approach that focuses on reference material in the form of books, agreements and other legal materials.²While the typology used in research is descriptive research, which describes in detail the results of research that have been obtained. The data used in the study consisted of primary data, secondary data and tertiary data. Primary data is the data in the form of Copyright Act and Darmajaya Press Collaboration Agreement, secondary data is the data in the form of books, journals and other literature and tertiary data is the data in the form of internet and dictionary search results. The data that has been obtained is then analyzed qualitatively by describing the data generated from research into a systematic explanation so it gets a clear picture of the problem under study, the results of the analysis can be deductively deduced.

² Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. PT Citra Aditya Bakti: Bandung. p. 34

II. DISCUSSION

a. Settlement of Copyright Disputes in Higher Education Issue

Based on Article 1 paragraph (1) of Law Number 28 of 2014, what is meant by copyright is the exclusive right of the creator, which arises automatically based on declarative principles after a work is realized in tangible form without reducing restrictions in accordance with statutory provisions. The history of copyright regulation in Indonesia is marked by the ratification of the Berne Convention and the TRIPs Agreement which is an international convention in the field of copyright so as a member country of the convention, Indonesia is obliged to follow and respect the standards of copyright protection which will be applied as national law. The TRIPs Agreement in Article 9 number 1 indicates that convention member countries are required to comply with the provisions of Article 1 through Article 21 of the 1971 Berne Convention and in the same article also broadens the scope of copyright protection, which is not just an idea but must reach expression. This indicates that the resolution of the dispute must be real not only be an idea merely in the sense of a work that can be seen, heard, read and so on.

The exclusive rights of the creator or owner of rights are related to moral rights and economic rights. Moral rights are defined as things that can be done or not by the owner of rights related to something that has been attached to him so it implies that every individual or other legal entity cannot change the work of his creation.³ Then economic rights are linked to profits for their creations. Related to this explanation, infringement of a copyright is very vulnerable. This caused a commotion in the realm of copyright because it was related to the work and profit. To anticipate this, the authorities in this case the executive together with the legislature, formulate provisions on the settlement of copyright infringement disputes contained in Article 95 of the Copyright Law, namely alternative dispute resolution, arbitration and courts. This provision is as related to the realm of

³ Indriasari Setyaningrum. 2014. *Perlindungan Hak Eksklusif Pencipta Terkait Hak Moral Dan Hak Ekonomi dalam Perjanjian Royalti dengan Penerbit Buku (Studi di UB Press Malang, UM Press Malang, Penerbit Bayumedia Malang)*. Skripsi Universitas Brawijaya: Malang. p. 26

civil law and the realm of criminal law. In the realm of civil law more emphasis on the occurrence of defaults from the licensing agreement between the author and the licensee or a dispute in the field of economic rights of the creator. In the realm of criminal law, several forms of violations can even be classified as crimes, including piracy of a work, eliminating and / or changing information on a work and so forth as stipulated in criminal provisions.

Further settlement of the copyright dispute can be reached by:

1. Alternative dispute resolution; in several ways regulated in Article 95 paragraph (1) of the Copyright Law, such as:
 - a) Mediation is defined as an intervention by a neutral third party to reach mutual agreement.
 - b) Negotiations, problem solving by the parties with a bargaining process to reach an agreement.
 - c) Conciliation, involves the conciliator to arrange the place and time and deliver a message to each party if it is not possible to be delivered directly and the agreement and decision are fully made by the parties.
2. Arbitration, settlement of civil disputes based on written arbitration agreements made by the parties containing clauses of sticky settlement before and after the dispute.
3. The court, settlement of a dispute through a court is an *ultimum remedium* or final choice for the disputing party. In the case of copyright disputes as regulated in Article 95 paragraph (2) of the Copyright Law, the court that has the right or absolute competence to settle the copyright dispute is the Commercial Court. The legal basis for these provisions is contained in Law Number 48 of 2009 concerning Judicial Power which states that a commercial court is a special court within the general court. As for prosecuting criminal claims for copyright infringement, the competent authority is the District Court as set out explicitly in the Copyright Law.

b. Application of Copyright in the Issuance of Higher Education Darmajaya Press

1. Aura Publishing

Based on searches, Aura Publishing is located at Jl. Prof. Dr. Soemantri Brojonegoro, Unila Gedong meneng, Bandar Lampung. The company was founded on December 28, 2012. The full name of the company is CV. Anugrah Utama Raharja and Aura is an abbreviation of the company's company and the Director is Ikhsanudin, M.M. Aura Publishing is a publisher in Bandar Lampung who is a member of the Indonesian Publisher Association (IKAPI). In addition to printing and publishing books, an important activity is as a consultant to establish publishing in universities. It can be said that Aura Publishing saw the lack of publishing in various Higher Education institutions so it could grasp the opportunity to publish lecturer books and provide services in establishing edits at Higher Education Institutions. Some universities that have become Aura Publishing partners are Lampung University, STAIN Metro, Bandar Lampung IAIN, and Darmajaya Press IIB Darmajaya. Cooperation to build a publication was done by Aura publishing with IIB Darmajaya who formed Darmajaya (DJ) Press. To increase the publication of Darmajaya IIB lecturers in book form, it is hoped that with the assistance of Aura Publishing that Darmajaya (DJ) Press will become a member of IKAPI.

2. Indonesian Publisher Association (IKAPI)

IKAPI was founded in Jakarta on May 17, 1950 since it was founded as the only publishing organization. Initially there were 13 publishers who joined IKAPI and after 5 years of standing IKAPI members increased to 46 members.⁴ IKAPI membership throughout Indonesia in 2014 reached 1,314 members. Meanwhile, up to 2015 the data of IKAPI members in Lampung is 5 publishers. The publishers are: Rosyaf Liwa Mandiri, Anugrah Hikmah, Anugrah Utama Raharja (Aura Publishing), Harakindo Publisher, Landung Alifatama. Until 2017 there is no complete information about the data of

⁴ <http://www.ikapi.org>

IKAPI members in Lampung, so the old members data can be accessed through the IKAPI website page. Even though based on the latest data in Lampung there are at least around 40 publishers. One of the agreements between IIB Darmajaya and Aura Publishing that Aura Publishing helped IIB Darmajaya to become a member of IKAPI, in Article 1 paragraph (3) of the Cooperation Agreement it was stated that the first party was obliged to arrange for DJ Press to become an IKAPI member publisher, provided the title of the book published had reached 10 titles. One of the requirements to improve the assessment of lecturer credit numbers is books published by IKAPI members. So the lecturers who publish books in publishers who are not or have not yet become IKAPI members, the value of the book will be reduced. Therefore, being an IKAPI member is one of the important conditions that can support economic rights for lecturers who write books.

International Standard Book Number (ISBN) is also one of the important aspects to become an IKAPI. Based on the National Library referred to ISBN is a unique book identification code. Information about the title, publisher and publisher group is included in the ISBN. Publishers whose books do not have an ISBN cannot apply to become a member of IKAPI. If you see a book published by Darmajaya (DJ), the Press has only reached 7 titles, so far it has not reached 10 titles if you look back at the agreement. In fact if referring to the membership of IKAPI, actually only 3 titles of books with ISBNs can apply for IKAPI membership. In its current development, with the Association of Indonesian Higher Education Publishers (APPTI), there are two choices of membership of publishing organizations, namely IKAPI and the Indonesian Association of Higher Education Publishers (APPTI). For higher education, besides being a member of IKAPI it is better to be a member of the Indonesian Higher Education Publishers Association (APPTI) is a must.

3. Form of Agreement

Referring to the moral rights and economic rights inherent in the lecturer who wrote the book, it must be traced to the agreement made either in the establishment agreement Darmajaya (DJ) Press and how the

agreement made between Darmajaya (DJ) Press with the Author. The cooperation agreement is stated in Number: 16/MA-a/III/2014 Number 043/DMJ/REK/KUIK/III/2014. This agreement also explains in detail the rights and obligations of both parties in publishing books. For example in the article on moral rights in the issuance of Article 2 paragraph (1) it is stated that, the second party has the right to publish. Then Article 4 states that, the contents of all manuscripts to be published as a result of this agreement become the full responsibility of the second party. This is what distinguishes between publishers and printing, in this case moral rights are the responsibility of Darmajaya (DJ) Press while the Aura Publishing is the party who printed the book. This is very common in the publishing industry, one of which is the clause that is always written in the book "contents outside the responsibility of printing" in this case that printing is not responsible for the content but the responsibility lies with the publisher, in this case Darmajaya (DJ) Press.⁵

As for the publisher, Darmajaya (DJ) Press has a mechanism for selecting and editing writing into a published book. Another important aspect covered by copyright is economic rights. In this economic right usually includes royalties received by the author. When this research was conducted, it could be said that there was no publishing agreement signed by the author and Darmajaya (DJ) Press. So it is quite difficult to see the economic rights in it. Referring back to the agreement between Aura Publishing and Darmajaya (DJ) Press, it is entirely Darmajaya (DJ) Press that bears the costs of publishing and Aura Publishing will print it. This can be seen in article 2 of the agreement. Article 3 point (2) states that a package of 30-50 copies is printed for a book title to be issued in the amount of Rp. 2,000,000 (two million rupiah) consisting of fees for managing ISBN, book layout and printing. Then paragraph (3) states that, books printed are more than the number of packages (point 2), then an additional fee will be charged in accordance with the printing costs. Next point (4) Books printed up to 300 copies more are only subject to printing costs. The agreement also stipulates that if a dispute occurs in the future it will be resolved by

⁵ <http://www.darmajaya.ac.id/id/ibi-darmajaya-dirikan-penerbitan-darmajaya-press-isbn/>

deliberation to reach consensus and if an agreement has not been reached then an *ultimum remedium* is chosen.

Starting from the explanation above, it can be seen that the agreement between the author and Darmajaya in the dispute resolution clause was chosen as an alternative to dispute resolution by either mediation, negotiation or conciliation to reach consensus. As well as looking at the agreement model used by Aura Publishing through its webset, we will see economic rights in the form of royalties reaching 20% of course this is very good for the fulfillment of the economic rights of the author.

III. CONCLUSION

Settlement of copyright disputes contained in the cooperation agreement on the issuance of Darmajaya Press colleges has followed the standard procedure of the Copyright Act which can be done alternatively by dispute resolution through mediation, negotiation and / or conciliation, it also accommodates dispute resolution through the courts. The application of copyright in the publishing of the Darmajaya Press college was carried out through the desire of Darmajaya (DJ) Press to become a member of IKAPI and in the agreement that was made there was a clause to reach 10 book publications, so that currently only 7 titles of ISBN have been reached. Then the writer (lecturer IIB Darmajaya) who published the book had not yet made a publishing agreement to guarantee copyright both moral rights and economic rights owned by the author.

Based on this case, it is necessary to increase awareness of the dispute resolution clause in an agreement so that all the worst possibilities in the future can be resolved by referring to the agreement made. Becoming a member of IKAPI, the requirement is to have published 3 titles with ISBN, so you don't have to wait 10 titles as stated in the agreement between the CV Aura Publishing Agreement with IIB Darmajaya. It is also recommended that lecturers whose books are published by Darmajaya (DJ) Press need to make a publishing agreement in order to obtain legality in copyright protection, both moral rights and economic rights owned by their authors.

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