

## Legal Provisions for Settlement of Plagiarism of Digital Fiction Works

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### *ABSTRACT*

Advances in technology and information have a significant impact on the world of writing. The existence of digital platforms makes the world of writing easier to access and enjoy. The convenience felt has positive and negative impacts. The positive impact is that writers can share with other writers to obtain contemporary and modern works. The negative impact is that the vastness of the digital era makes the work that has been produced vulnerable to plagiarism. Plagiarists will find it very easy to copy and paste the work and re-upload the work as if it were the result of the perpetrator's own thoughts. This research is a normative legal research, with a statute approach and a concept approach. The legal materials used are primary legal materials in the form of Laws and Regulations in force in Indonesia. The results of the study can be concluded that: first, Legal provisions for perpetrators of plagiarism of fictional works on digital platforms can be resolved through the courts and outside the courts. Settlement of plagiarism disputes through the courts can be resolved in commercial courts, district courts and administratively. Settlement of plagiarism disputes that are resolved outside the court can be through negotiation, mediation, conciliation and arbitration

Keywords: Legal Provisions, Plagiarism, Digital Fiction.

### **Introduction**

Human ability to create a work is a manifestation of thought, creativity and effort. The results fully belong to the creator which is called intellectual property. Intellectual property is everything that is the result of human thought such as ideas, inventions, poetry, brands, designs, semiconductors, literary works, works of art and so on..<sup>1</sup>

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<sup>1</sup> Ujang Badru Jaman, Urgensi Perlindungan Hukum Terhadap Hak Cipta Karya Digital (Jurnal *Rechten: Riset Hukum Dan Asasi Manusia*), 2021, Vol. 3 No. 1 h. 9

In this modern era, the creative works produced are increasingly varied. A work that was previously in physical form, can now be easily accessed in digital form. The convenience of the digital era has a better influence on the world of writing. Social media provides space for writers to present every work produced. Every writer of a work can freely write, contribute ideas. Various types of works are widely published on digital platforms, one type of work that is booming and in great demand by the public is fiction or non-scientific work. Fiction or non-scientific work is a work in the form of a composition that does not have a binding rule or a certain writing system, and is made using relaxed language, different from scientific writing.

The use of technology must also be balanced with the development of the author's insight. Through digital platforms, each author can share, interact and collaborate with other authors in order to create a contemporary, modern and quality work. Digital writing activities have positive and negative impacts on the world of writing. The positive impact that can be felt by authors is the ease of presenting work, authors can collaborate with other authors. The breadth of the digital writing era is able to eliminate the walls between authors and readers. Digital works are increasingly practical because they do not require storage space in the form of shelves, display cases and others. The way to get digital products is also practical and economical, namely by downloading on a device such as a cellphone, computer, laptop and so on.

The positive impact of digital writing or digital writing activities has been widely felt by writers. Meanwhile, the negative impacts of this digital writing era include, everyone can access the internet freely and without limits, making works that have been distributed vulnerable to plagiarism. The convenience felt by writers can easily be exploited by irresponsible parties. Unlawfully, perpetrators can distribute/spread works without permission from the creator. The convenience of the digital era makes it easy for plagiarists to change and modify works without the creator's knowledge.

The vastness of the digital era makes it difficult for perpetrators of copyright infringement to be detected.

Plagiarism, or what is commonly known as plagiarism, is the act of copying or taking someone else's work or opinion and making it look like your own work.<sup>2</sup> Plagiarism can be considered a criminal act because it involves taking and distributing someone else's work.

Plagiarism has a significant impact on writers. The creative ideas that writers have will decrease and writers will feel a loss of motivation to work. Writers will lose their reputation and trust from readers that the published work is the result of the writer's own thoughts. Plagiarism also has an emotional impact that writers will feel disappointed, hurt, and frustrated.

The underlying motives of perpetrators to plagiarize fictional works on digital platforms include, lack of creativity possessed by the perpetrator, inability to produce fictional works, and the perpetrator's desire to gain recognition from readers. Perpetrators tend to ignore the intellectual property rights owned by the author. In the end, the author loses moral rights and copyrights that are exclusively owned by the author since the work was published on the digital platform.

The vastness of the digital era makes it difficult for authors to find plagiarists in works that have been created. This difficulty arises because of the low level of protection of intellectual property rights in written works that have been published on digital platforms. These weaknesses include limited jurisdiction and regulations in positive law in Indonesia.

## **Research Method**

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<sup>2</sup> Ni Wayan Nita Dewi, Tindak Pidana Plagiarisme Terhadap Novel Elektronik pada Aplikasi Wattpad. Fakultas Hukum, Universitas Warmadewa, Bali. Vol. 3, No. 2 h. 329

This research uses a normative legal research method, with a statute approach and a concept approach. The primary legal materials used are Law Number 28 of 2014 concerning Copyright, the Criminal Code (KUHP), and Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2015 Number 26 of 2015 concerning the Implementation of Content Closure and/or User Access Rights for Copyright Violations and/or Related Rights in Electronic Systems. This is done by conducting a review based on the formulated problem topic, then reviewed comprehensively based on the sources obtained. While the concept approach begins with the views and doctrines that develop in legal.

## **Results and Discussion**

In the digital era, it is important for creators to protect fictional works published on digital platforms. Article 1 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that the creator's exclusive rights arise automatically since the work is published. However, strong legal protection is still needed as proof that the work is truly the result of the creator's own thoughts. When an action occurs, the creator of the work can resolve the plagiarism case in two ways, namely resolving the dispute outside the court and through the court. It is stated in Article 95 paragraph (1) of Law Number 28 of 2014 concerning Copyright, namely: "the resolution of copyright disputes can be carried out through alternative dispute resolution, arbitration, or the courts."

The process of resolving the plagiarism dispute can be said to be a repressive effort. Repressive efforts aim to resolve disputes that arise due to violations of rights. Handling of legal protection aspects by general courts and administrative courts in Indonesia falls into the category of repressive legal protection.

### **1. Dispute Resolution in Court**

The court is an official judicial institution that tries criminal and civil cases. Settlement of cases can be divided into 3 (three) ways, namely through civil, criminal, and administrative. Settlement of civil cases can pay attention to article 95 paragraph (2) and (3) of law number 28 of 2014 concerning copyright which states that the court that has the authority to handle the settlement of copyright disputes is a commercial court. Courts other than commercial courts are not authorized to handle the settlement of copyright disputes.<sup>3</sup>

The procedure for filing a lawsuit is regulated in Articles 100-101 of Law Number 28 of 2014 concerning Copyright, which contains:

- a. Lawsuits for copyright infringement are filed with the chairman of the commercial court.
- b. Lawsuits are recorded by the clerk of the commercial court.
- c. The clerk provides a signed receipt on the same date as the registration.
- d. Lawsuits are processed no later than 2 (two) days after the lawsuit is registered.
- e. Notification and summons of related parties are carried out by the bailiff no later than 7 (seven) days after the lawsuit is registered.
- f. The verdict on the lawsuit is pronounced no later than 90 (ninety) days after the lawsuit is registered.

Creators who feel that their economic rights have been harmed by the perpetrator of plagiarism can obtain compensation which is given and stated in the verdict of the lawsuit that has been filed in the Commercial Court. Payment of compensation by the perpetrator of plagiarism to the creator of the work must be paid no later than 6 (six) months after the verdict has permanent legal force is read out.

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<sup>3</sup> Niken Cindy Nurfadila, Perlindungan Hukum Terhadap Pelanggaran Hak Cipta Penulisan Di Aplikasi Digital (*Wattpad*) Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta, Fakultas Hukum Universitas Islam Malang, Vol. 27, No. 202. H. 1271

Settlement of plagiarism disputes through criminal channels is by enforcing a complaint offense. Creators of works who feel that their moral and economic rights have been violated can report the act of piracy to the Directorate General of Intellectual Property Rights in collaboration with the police by bringing valid and corroborating evidence. Before making criminal charges against the perpetrator of plagiarism, Article 95 paragraph (4) states that in addition to copyright infringement in the form of piracy, as long as the parties to the dispute are known, they must first take the mediation route. However, because the act of piracy carried out by the perpetrator of plagiarism is done digitally, the creator can take legal action by paying attention to Article 380 paragraph (1) of the Criminal Code (KUHP), namely: "Anyone who puts a false name or mark, or falsifies the original name or mark on or in a work of literature, science, art or crafts on which or in which a false name or mark is placed or a falsified name is placed as if the work were actually a product of the handiwork of the person whose name or mark is placed on or in the work, shall be punished by imprisonment for a maximum of two years and eight months or a maximum fine of Rp. 75,000. "

The two ways of settlement through the courts can be done simultaneously. This means that the creator who feels aggrieved can use the civil path by filing a civil lawsuit against the perpetrator and the creator can file a criminal lawsuit against the perpetrator for the crime.

In addition to civil and criminal legal efforts, creators of works can report acts of piracy to the Directorate General of Intellectual Property Rights and the Directorate General of Human Rights in accordance with Articles 55 and 56 of Law Number 28 of 2014 concerning Copyright. Article 56 Paragraph (2) provides direction to the minister to create joint regulations for the implementation of administration in the form of closing content and/or access rights on the internet. The report note submitted must include:

- a. Reporter's identity
- b. Proof of copyright of the work

- c. Website address
- d. Type or name of the infringing content
- e. Type of violation
- f. Other information related to the content that violates copyright.

The report note is stated in the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2015 Number 26 of 2015 Concerning the Implementation of Closing Content and/or User Access Rights of Copyright Violations and/or Related Rights in Electronic Systems. Reports can be made electronically or non-electronically. After the report that meets the requirements is received by the relevant party, a verification process will be carried out to determine whether or not the copyright infringement case is true. If the verification results find copyright infringement, the Directorate of Investigation will then make a report to the Directorate General of Intellectual Property Rights to make a recommendation letter for closing content and/or access rights to the Directorate General of Communication and Information to then be closed against content and/or user access rights for a maximum of 1x24 hours to the sites.<sup>4</sup>

## **2. Dispute Resolution Outside the Court**

Article 95 paragraph (1) of the UUHC states that resolving plagiarism cases outside the courts in the form of alternative dispute resolution is a dispute resolution process that can be carried out through negotiation, mediation, conciliation and arbitration.

### **a. Negotiation**

Derived from the English word negotiation which means negotiation. In everyday life, negotiation is equivalent to the term deliberating, deliberating or

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<sup>4</sup> Daniel Andre Stefano, Perlindungan Hukum Pemegang Hak Cipta Film Terhadap Pelanggaran Hak Cipta yang Dilakukan Situs Penyedia Layanan Film Streaming Gratis di Internet (Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta), Diponegoro Law Journal, 2016. Vol. 5 Nomor. 3 h. 10

reaching a consensus.<sup>5</sup> Thus, negotiation is a method of resolving disputes outside the courts carried out by the disputing parties or their attorneys directly, without the involvement of a third party as a mediator.<sup>6</sup> There are two possible perspectives of a person or negotiator when conducting a negotiation process. First, a moderate aggressive stance, namely the negotiator tries to use all efforts/power to gain his own advantage. This perspective tends to explain that one party wants to gain as much advantage as possible from the opposing party without caring about the condition and position of the opposing party. Second, it is called a win-win position, namely both parties in dispute are looking for a solution to the dispute they are facing. Trying to find a solution to the problem that does not harm either party, but both are mutually pleasing and beneficial.<sup>7</sup>

The settlement of plagiarism disputes carried out through a negotiation process has four stages, namely:

1. Pre-negotiation
2. Negotiation
3. Signing of negotiation results
4. Implementation of the peace deed (acta compromise).

#### **b. Mediation**

Derived from the English word mediation, which means dispute resolution involving a third party as a mediator or dispute resolution through mediation, the person who mediates is called a "mediator" or the person who acts as a mediator.<sup>8</sup> Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution does not provide a definition of mediation. However, there are provisions in the law regarding mediation contained in Article 6 Paragraph (3), Paragraph (4), Paragraph (5). The

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<sup>5</sup> Suyud Margono, *Alternative Dispute Resolution And Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta. Ghalia Indonesia, 2004, h. 41

<sup>6</sup> Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung. PT. Citra Aditya Bakti, 2013. Cet ke-2, h. 68

<sup>7</sup> Candra Irawan, *Aspek Hukum dan Mekanisme Penyelesaian Sengketa di Luar Pengadilan (Alternative Dispute Resolution) di Indonesia*, Bandung. Cv. Mandar Maju, 2010. Cet. Ke-1, h. 31

<sup>8</sup> Suyud Margono, *Op.cit* h. 95



contents of the article allude to mediation as a continuation of dispute resolution if consultation and negotiation cannot produce an agreement that resolves the dispute.<sup>9</sup> The dispute resolution process through mediation has a time limit of 30 days which must be completed until an agreement is reached in written form and signed by all parties involved.

A mediator must have the ability to maintain neutrality when mediating, have experience in resolving disputes through mediation, be patient, and be able to maintain the confidentiality of each party being mediated (confidentiality principle).<sup>10</sup> The mediation process consists of 4 (four) stages, namely, pre-mediation, implementation of mediation, closing of mediation, and implementation of the peace deed.

### **c. Conciliation**

Derived from the English word conciliation which means agreement. So, conciliation is a dispute resolution outside the court through agreement or deliberation carried out by the disputing parties themselves accompanied/mediated by one or more neutral third parties who are active as conciliators.<sup>11</sup> In Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the definition of conciliation is not explained in detail. The law only states in Article 1 Paragraph (10) that conciliation is one part of the alternative dispute resolution outside the court. Conciliation is almost the same as mediation. Both use a third party as a mediator for the dispute being faced. However, both mediation and conciliation still have differences in terms of role, control, and final decision. Several stages that must be passed when resolving a dispute through conciliation are as follows:

- 1) Settlement of disputes to the conciliation commission.
- 2) The conciliation commission listens to statements from the disputing parties.

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<sup>9</sup> Candra Irawan, Op.cit h. 42

<sup>10</sup> Candra Irawan, Loc.cit

<sup>11</sup> Suyud Margono, Op.cit h. 129

- 3) Through the facts that have been explained by the disputing parties, the conciliation commission submits a report containing conclusions and proposals for dispute resolution to the disputing parties.<sup>12</sup>

#### **d. Arbitration**

Arbitration is a method of resolving disputes outside of litigation or court institutions which is carried out by the disputing parties on the basis of an agreement or contract which they have made before or after the dispute occurs.<sup>13</sup>

The procedural law for arbitration is regulated in the arbitration law as follows:

- 1) Closed dispute hearing
- 2) Involvement of the parties
- 3) Choice of arbitration procedure used
- 4) Applicant's lawsuit and respondent's response
- 5) Peace efforts
- 6) Provincial decision
- 7) Examination of evidence.

The examination of disputes through arbitration takes a maximum of 180 days from the date the arbitration panel is formed. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Articles 59-64 explain that the process of implementing domestic arbitration decisions goes through several stages, namely, no later than 30 days from the date the arbitration decision is pronounced, the arbitrator or his attorney must have registered the decision with the District Court, the registration fee for the deed of arbitration decision is charged to the disputing parties,

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<sup>12</sup> Farid Wajdi, *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa Bisnis (Dilengkapi Arbitrase Online dan Arbitrase Syariah)*. Penerbit Sinar Grafika, Jakarta. Cet. 1, 2023. h. 25

<sup>13</sup> Suyud Margono, *Op.cit* h. 140

and the parties involved are required to implement the arbitration decision voluntarily.<sup>14</sup>

## **Conclusion**

Legal provisions for perpetrators of plagiarism of fictional works on digital platforms can be resolved through the courts and outside the courts. First, the settlement of plagiarism disputes through the courts can be carried out through the Commercial Court in accordance with Article 100-101 of Law Number 28 of 2014 concerning Copyright, through the District Court by considering Article 380 Paragraph (1) of the Criminal Code. Then it is carried out administratively by reporting the act of plagiarism to the Directorate General of Intellectual Property Rights and the Directorate General of Human Rights to close the content and/or user access rights in accordance with the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia and the Minister of Communication and Information of the Republic of Indonesia Number 14 of 2015 Number 26 of 2015 concerning the Implementation of Closing Content and/or User Access Rights of Copyright Violations and/or Related Rights in Electronic Systems. Second, Article 95 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that dispute resolution outside the courts can be carried out through negotiation, mediation, conciliation and arbitration.

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<sup>14</sup> Candra Irawan, Op.cit . h. 7

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